

2901

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
3 BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
4 DEPARTMENT NO. 505

5
6 LESLIE J. WHITELEY AND)
7 LEONARD WHITELEY,)
8 PLAINTIFFS,)
9 VS.) NO. 303184
10 RAYBESTOS-MANHATTAN, INC., ET)
11 AL.,)
12 DEFENDANTS.)
13 _____)
14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 WEDNESDAY, FEBRUARY 9, 2000
17 (VOLUME 21, PAGES 2901-3067)
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23 REPORTED BY: JUDITH ANN OSSA, CSR 2310
24 OFFICIAL REPORTER
25
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28

2902

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1 WEDNESDAY, FEBRUARY 9, 2000 9:10 A.M.
2 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE
3 COURTROOM, IN THE PRESENCE OF THE JURY)
4 THE COURT: GOOD MORNING, EVERYBODY.
5 BEFORE WE START TODAY, ONE HOUSEKEEPING MATTER
6 THAT JUDITH HAS BROUGHT TO MY ATTENTION. AND THAT IS, YOU
7 LAWYERS ARE GOING TOO FAST, AND THE WITNESS IS TOO.
8 YOU HAVE GOT TO MAKE A CONSCIOUS EFFORT TO SLOW
9 DOWN, BECAUSE ONE OF THE THINGS WE ARE DOING OUT HERE IS
10 MAKING A RECORD, AS YOU KNOW, AND IF SHE CAN'T IT DOWN, WE

11 ARE NOT GOING TO GET A RECORD.
12 ANOTHER THING YOU CAN ALL KEEP IN MIND, WHICH I
13 SAID BEFORE, WHICH IS IF SHE CAN'T GET IT, THE CHANCES ARE
14 THAT THE JURY AND THE COURT IS NOT GETTING IT EITHER. AND
15 IF NOBODY IS GETTING IT, THEN WHY ARE WE DOING IT?
16 SO LET'S SLOW DOWN. WE REALLY HAVE TO PAY
17 ATTENTION TO DOING THAT. SO PLEASE, WOULD EVERYBODY MAKE A
18 CONSCIOUS EFFORT TO DO THAT.
19 AND I'M GOING TO ASK HER IF THAT DOESN'T HAPPEN,
20 JUST TO FEEL FREE TO INTERRUPT YOU, AND SAY "WE HAVE GOT TO
21 SLOW DOWN," BECAUSE SHE'S THE ONLY ONE THAT KNOWS WHAT SHE
22 IS GETTING, WHAT SHE IS NOT.
23 LET'S TAKE THIS SERIOUSLY. I MENTIONED IT TO YOU
24 AND SHE HAS FROM TIME TO TIME. BUT I'M TAKING TIME OUT NOW
25 TO MAKE A POINT ABOUT IT IN A REPETITIOUS WAY, WITH THE HOPE
26 THAT IT'S GOING TO SINK IN. OKAY.
27 WE ARE READY TO PROCEED TODAY, AND WE HAVE DR.
28 SMITH BACK ON THE STAND.

2905

1 MR. ROSSE, I THINK YOU WERE CROSS-EXAMINING
2 DR. SMITH.

3 MR. ROSSE: THANK YOU.
4 FURTHER TESTIMONY OF
5 ALLAN SMITH, M.D.,
6 A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN
7 PREVIOUSLY DULY SWORN, TESTIFIED FURTHER AS FOLLOWS:
8

9 CROSS-EXAMINATION (RESUMED)

10 BY MR. ROSSE: Q. DR. SMITH, WE WERE TALKING
11 ABOUT A REPORT AND A DEPOSITION TRANSCRIPT BY DR. HAMMAR
12 THAT WAS IN YOUR FILE; CORRECT?

13 MR. BROWN: YOUR HONOR, I THINK THERE WAS A
14 RULING ON THAT.

15 THE COURT: I DIDN'T HEAR THE QUESTION.

16 MR. BROWN: A QUESTION ABOUT HAMMAR.

17 THE COURT: I THINK WE TOOK CARE OF THAT.

18 IF YOU WANT TO HAVE A SIDEBAR, WE CAN, BUT I
19 THINK WE TOOK CARE OF THIS.

20 MR. ROSSE: ACTUALLY, I DO, YOUR HONOR. MAYBE I
21 MISUNDERSTOOD.

22 THE COURT: MAYBE YOU DID.
23 (COURT AND COUNSEL CONFER OUTSIDE
24 THE PRESENCE OF THE JURY)

25 THE COURT: OKAY. WE'RE BACK ON THE RECORD.

26 MR. ROSSE.

27 MR. ROSSE: I WILL WITHDRAW THE LAST QUESTION.

28 THE COURT: ALL RIGHT.

2906

1 MR. ROSSE: Q. DOCTOR, DID YOU REVIEW MEDICAL
2 RECORDS IN THIS CASE?

3 A. I REVIEWED MEDICAL REPORTS AND SOME MEDICAL
4 RECORDS, YES.

5 Q. DID YOU CONSIDER THOSE REPORTS AND MEDICAL
6 RECORDS IN FORMING YOUR OPINION IN THIS CASE?

7 A. SOME, YES.

8 Q. DOCTOR, WOULD YOU AGREE WITH ME THERE'S AT LEAST
9 SOME DISPUTE WITHIN THE MEDICAL COMMUNITY ON WHETHER OR NOT
10 ASBESTOSIS IS REQUIRED AS A PRECURSOR IN FINDING ASBESTOS TO
11 BE A CAUSE OF LUNG CANCER?

12 A. I'M NOT SURE HOW TO ANSWER THAT QUESTION. IT IS
13 TRUE, IN THE PAST, THERE HAVE BEEN SOME ARTICLES DISPUTING
14 WHAT YOU SAID.

15 RIGHT NOW, I WOULD THINK THE EVIDENCE IS PRETTY

16 CLEAR, AND WHAT SOME OF THOSE PEOPLE WHO ONCE SAID YOU HAD
17 TO HAVE ASBESTOSIS WOULD THINK NOW, I DON'T KNOW.

18 Q. AT LEAST IN THE PAST, THERE WERE SOME PEOPLE THAT
19 BELIEVED THAT?

20 A. CORRECT.

21 Q. AND YOU ARE NOT SURE WHETHER THEY STILL BELIEVE
22 THAT OR NOT?

23 A. I DON'T KNOW.

24 Q. NOW, EARLIER, YOU SAID THAT ASBESTOSIS IS ONLY
25 CAUSED BY ASBESTOS EXPOSURE?

26 A. CORRECT.

27 Q. WHAT IS ASBESTOSIS?

28 A. YOU CAN DEFINE THAT VERY SIMPLY. IT'S A DISEASE
2907

1 OF THE LUNG THAT'S CAUSED BY ASBESTOS EXPOSURE. IT'S NOT A
2 CANCER. IT INVOLVES VARIOUS OF THE TISSUES AND THE CELLS IN
3 THE LUNG THAT RESULTS IN PROBLEMS WITH BREATHING.

4 Q. IT'S FIBROSIS?

5 A. IT INCLUDES FIBROSIS, YES.

6 Q. FIBROSIS IS NOT THAT UNCOMMON IN HUMAN LUNGS?

7 A. ASBESTOSIS IS EXTREMELY UNCOMMON. THAT TYPE OF
8 FIBROSIS IS VERY RARE.

9 BUT IF YOU SAID: "DOES SOME FIBROSIS OCCUR IN
10 SOME LUNGS," THEN ONE ALSO HAS TO ADD IN A LOT OF OTHER
11 CONDITIONS, LIKE SILICOSIS, PNEUMOCONIOSIS.

12 THEN IF YOU EVER GET AN INJURY TO YOUR LUNG IN
13 SOME FORM OR OTHER, SCAR WILL FORM THERE.

14 SO THERE ARE -- THE PRESENCE OF SCAR TISSUE IN
15 LUNGS IS FAIRLY FREQUENT.

16 Q. AND IT'S CALLED FIBROSIS WHEN IT'S IN THE LUNG?

17 A. IT'S INTERSTITIAL PULMONARY FIBROSIS IF IT'S IN
18 THE LUNG.

19 Q. AND THAT'S NOT THAT UNCOMMON IN HUMANS?

20 A. IT IS. IT'S NOT THAT COMMON TO HAVE ASBESTOSIS.
21 WHEN YOU GET INTERSTITIAL PULMONARY FIBROSIS DUE
22 TO ASBESTOS, THEN THAT'S VERY RARE.

23 Q. DOCTOR, I WAS ASKING YOU IF INTERSTITIAL
24 PULMONARY FIBROSIS, THAT'S UNCOMMON, NOT ASBESTOSIS.

25 A. IN MY OPINION, IF YOU HAVE A DIAGNOSIS OF
26 INTERSTITIAL PULMONARY FIBROSIS IN THE LUNGS IN PATIENTS IS
27 QUITE UNCOMMON.

28 Q. UNCOMMON?

2908

1 A. IT IS.

2 Q. THE INTERSTITIAL FIBROSIS IS CALLED ASBESTOSIS WHEN
3 IT'S ASSOCIATED WITH ASBESTOS AS A CAUSE?

4 A. WHEN ASBESTOS CAUSED IT, YES.

5 Q. BUT YOU CAN HAVE THE SAME SCARRING APPEARING IN
6 YOUR LUNGS WITH OTHER CAUSES?

7 A. NO, NOT REALLY. THERE IS A VERY RARE CONDITION
8 CALLED INTERSTITIAL PULMONARY FIBROSIS, WHICH BASICALLY IS
9 OF UNKNOWN CAUSE. THAT'S VERY RARE. ASBESTOSIS IS MORE
10 COMMON THAN THAT.

11 YOU CAN HAVE ALSO OTHER DISEASES, LIKE SILICOSIS
12 I MENTIONED, WHICH CAUSE FIBROSIS, BUT THESE AREN'T COMMON.

13 ASBESTOSIS IS FAIRLY COMMON IN ASBESTOS WORKERS,
14 BUT NOT IN THE GENERAL POPULATION. AND OTHER -- THESE OTHER
15 TYPES OF DISEASE LABELED INTERSTITIAL PULMONARY FIBROSIS ARE
16 EVEN RARER STILL.

17 Q. NOW, IF YOU SAW ASBESTOSIS IN A CASE OF LUNG
18 CANCER, YOU WOULD SAY THAT DEFINITELY SHOWS THAT THE LUNG
19 CANCER WAS CAUSED BY THE ASBESTOS; CORRECT?

20 A. NO, I WOULDN'T WORD IT THAT WAY.

21 I'D SAY IF THERE WAS ASBESTOSIS, THERE WAS LUNG
22 CANCER.
23 THE ASBESTOSIS PROVIDES ADDITIONAL EVIDENCE,
24 ALONG WITH THE WORK HISTORY, THAT THE LUNG CANCER WAS CAUSED
25 BY ASBESTOS.

26 IT WOULD MEAN IN ALL PATIENTS WHO FIRST GET
27 ASBESTOSIS AND WHO LATER GET LUNG CANCER THAT THE ASBESTOS
28 WOULD BE INVOLVED, THOUGH, IN CAUSATION OF THE LUNG CANCER.

2909

1 Q. YOU WOULD AGREE THAT THE PRESENCE OF ASBESTOSIS,
2 WHETHER OR NOT IT'S A CAUSE OF LUNG CANCER, THE MERE
3 PRESENCE OF ASBESTOSIS SHOWS ENOUGH EXPOSURE TO BELIEVE THAT
4 LUNG CANCER WAS CAUSED BY THAT AMOUNT OF EXPOSURE?

5 A. YES. I'VE ALWAYS WANTED TO FIND OUT ABOUT A WORK
6 HISTORY, WHAT THE EXPOSURE WAS, BECAUSE IT'S SUSPECTED IN
7 EVERY CASE WHEN WE END UP CONCLUDING ASBESTOS WAS INVOLVED
8 IN THE CAUSATION OF SUCH A LUNG CANCER.

9 Q. YOU WOULD AGREE, SOME EXPERTS HAVE WRITTEN THEY
10 DON'T BELIEVE ASBESTOSIS IS A CAUSE, BUT THEY BELIEVE THAT
11 THE LEVEL OF EXPOSURE IT TAKES TO FIND ASBESTOSIS --

12 MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO
13 SOME UNSPECIFIED REFERENCE TO SOME EXPERTS. I DON'T THINK
14 THAT'S PROPER.

15 THE COURT: ARE YOU ASKING ABOUT THE
16 LITERATURE?

17 MR. ROSSE: YES, YOUR HONOR.

18 THE COURT: DO YOU WANT TO -- I THINK HIS
19 OBJECTION IS THAT IT'S VAGUE, WHAT YOU MEAN BY "SOME
20 EXPERTS."

21 WHY DON'T YOU REPHRASE THE QUESTION.

22 MR. ROSSE: Q. YOU WOULD AGREE THAT SOME
23 MEDICAL RESEARCHERS THAT HAVE WRITTEN ARTICLES THAT HAVE
24 OPINED THAT IT'S THE LEVEL OF EXPOSURE THAT CAUSES
25 ASBESTOSIS THAT THEY WOULD LOOK FOR BEFORE LINKING LUNG
26 CANCER TO ASBESTOS?

27 A. I THINK I HAVE SEEN THAT MENTIONED IN THE
28 LITERATURE, YES.

2910

1 Q. NOW, YOU DIDN'T SEE ANY INDICATION OF ANY
2 ASBESTOSIS IN THE PLAINTIFF IN THIS CASE, DID YOU?

3 A. CORRECT.

4 Q. DID YOU SEE ANY INDICATION THAT MR. WHITEKER HAD
5 ASBESTOSIS?

6 A. NO.

7 Q. DID YOU SEE ANY INDICATION THAT THE PLAINTIFF IN
8 THIS CASE HAD PLEURAL PLAQUES?

9 A. NO.

10 Q. PLEURAL PLAQUES ARE ALSO ASSOCIATED WITH ASBESTOS
11 EXPOSURE; CORRECT?

12 A. THEY CAN BE CAUSED BY ASBESTOS, YES.

13 Q. AND GENERALLY, IN THE LITERATURE, IT'S BELIEVED
14 THAT PLEURAL PLAQUES HAVE A LOWER LEVEL OF EXPOSURE
15 CAUSATION THAN DOES ASBESTOSIS?

16 A. WHEN YOU SAY "GENERALLY IT'S BELIEVED IN THE
17 LITERATURE," NO.

18 THERE HAVE BEEN STATED VIEWS THAT PLEURAL PLAQUES
19 MAY OCCUR AT LOWER LEVELS OF EXPOSURE THAN ASBESTOSIS. BUT
20 IN MY OPINION, THERE'S DOSE/RESPONSE RELATIONSHIPS FOR BOTH
21 THAT SPAN A WIDE RANGE.

22 AND I DON'T AGREE WITH THAT, AND I DON'T THINK I
23 WOULD SAY IT'S GENERALLY BELIEVED IN THE LITERATURE.

24 Q. DOCTOR, THERE IS NO INDICATION THAT THE PLAINTIFF
25 SUFFERED FROM PLEURAL PLAQUES IN THIS CASE; CORRECT?

26 A. CORRECT.
27 Q. THERE IS NO INDICATION THAT MR. WHITTEKER HAS
28 PLEURAL PLAQUES IN THIS CASE; CORRECT?
2911
1 A. I DON'T KNOW, BUT I DON'T HAVE ANY EVIDENCE HE
2 HAS PLEURAL PLAQUES OR DOESN'T HAVE IT.
3 Q. THE PRESENCE OF ANY OF THESE DISEASES IN THE
4 FATHER OR ANY OF THE FAMILY MEMBERS WOULD INDICATE TO AN
5 EPIDEMIOLOGIST THAT THERE IS A HIGH LEVEL OF EXPOSURE TO
6 ASBESTOS; CORRECT?
7 A. I WOULD WORD IT, THERE IS A SIGNIFICANT
8 OCCUPATIONAL EXPOSURE TO ASBESTOS. SOME CASES OF ASBESTOSIS
9 OCCUR IN HOUSEHOLD SETTINGS, FROM EXPOSURE TO FAMILY
10 MEMBERS.
11 FOR EXAMPLE, THEY CAN OCCUR AT QUITE LOW LEVELS
12 OF EXPOSURE. THEY'RE RARE AT LOW LEVELS OF EXPOSURE.
13 Q. AND OFTEN, THE LOW LEVELS OF EXPOSURE WHICH YOU
14 BELIEVE ARE ASBESTOSIS ARE DISPUTED BY OTHER PEOPLE, AREN'T
15 THEY?
16 A. I DON'T KNOW WHAT YOU MEAN BY THAT.
17 Q. YOU OFTEN TESTIFY IN LAWSUITS THAT YOU BELIEVE
18 IT'S ASBESTOSIS, AND OTHER PEOPLE YOU KNOW OPINE THAT IT'S
19 NOT?
20 MR. BROWN: OBJECTION. CALLS FOR HEARSAY.
21 THE COURT: SUSTAINED.
22 MR. ROSSE: Q. YOU ARE AWARE THAT, WITHIN THE
23 MEDICAL COMMUNITY, THERE ARE SOMETIMES DISPUTES AS TO THE
24 CAUSE OF PULMONARY FIBROSIS IN PATIENTS?
25 A. THE CAUSE OF WHAT?
26 Q. PULMONARY FIBROSIS IN PATIENTS.
27 A. WELL, NOT -- I'M AWARE THAT SOMETIMES THE
28 PULMONOLOGISTS OR THE RADIOLOGISTS OR THE PATHOLOGISTS
2912
1 AREN'T SURE OF SOMETHING. I'M AWARE THAT THERE MAY BE
2 DISAGREEMENT.
3 Q. LET ME SEE IF I HAVE THIS STRAIGHT, DOCTOR.
4 YOU WOULD AGREE THAT THERE ARE NO EPIDEMIOLOGY
5 STUDIES WHICH YOU'RE AWARE OF WHICH CONCLUDE WITHIN THE
6 STUDY THAT NONOCCUPATIONAL EXPOSURE TO ASBESTOS IS A CAUSE
7 OF LUNG CANCER?
8 A. THAT'S CORRECT. THAT STATEMENT DOES NOT APPEAR
9 IN ANY ARTICLE IN THOSE STUDIES THAT I KNOW OF.
10 Q. YOU ARE NOT AWARE OF THAT STATEMENT APPEARING IN
11 ANY MEDICAL ARTICLE?
12 A. I WOULDN'T SAY THAT, NO. I WOULD SAY, IN THE
13 STUDIES THAT WE TALKED ABOUT, THOSE PHRASES AREN'T THERE.
14 Q. YOU ARE NOT TELLING US THAT THE STUDIES THAT WE
15 TALKED ABOUT, THAT THOSE AUTHORS DON'T KNOW WHAT THEY'RE
16 DOING?
17 A. I CAN'T -- I DON'T KNOW IF YOU'RE JOKING. I'M
18 SORRY. I THOUGHT THAT WAS RATHER FUNNY.
19 Q. I'M NOT JOKING.
20 A. WHEN WE WRITE ARTICLES, WE DON'T PUT EVERY SINGLE
21 STATEMENT IN THE ARTICLE. THE FACT THAT AUTHORS DON'T PUT
22 CERTAIN STATEMENTS IN THE ARTICLE DOESN'T MEAN TO SAY THEY
23 DON'T KNOW WHAT THEY'RE DOING.
24 Q. I'M A LITTLE UNCLEAR ON WHAT YOU BELIEVE THE
25 LEVEL OF EXPOSURE IS IN THIS CASE.
26 IS THAT BASED ON DEPOSITIONS? IS THAT BASED ON A
27 HYPOTHETICAL? WHAT ARE YOU BASING YOUR OPINION ON CAUSATION
28 ON IN THIS CASE, AS FAR AS THE EXPOSURE?
2913
1 A. WELL, I THOUGHT WE WENT -- CAN I ANSWER AGAIN?

2 IN THE WORLD LITERATURE --
3 Q. ACTUALLY --
4 A. CAN I -- ARE YOU ASKING ME A QUESTION?
5 Q. I WANT TO CLARIFY IT, ACTUALLY.
6 A. I STARTED ANSWERING IT.
7 THE COURT: JUST A SECOND. IF YOU WANT TO
8 CLARIFY, LET HIM CLARIFY THE QUESTION.
9 MR. ROSSE: Q. I WAS ASKING FOR THE SOURCE OF
10 YOUR INFORMATION.
11 A. I'M STARTING TO EXPLAIN IT, COUNSEL.
12 Q. OKAY.
13 A. IN THE SCIENTIFIC LITERATURE, THERE'S MANY
14 STUDIES ON PLUMBERS AND PIPEFITTERS SHOWING ASBESTOS DISEASE
15 AND EXTENSIVE EXPOSURE. IT'S ONE OF THE MAIN OCCUPATIONAL
16 GROUPS GETTING THE ASBESTOS-CAUSED MESOTHELIOMAS RIGHT NOW.
17 IN A MAJOR STUDY, FOR EXAMPLE, IN ENGLAND, IT'S
18 THE THIRD MOST COMMON OCCUPATIONAL GROUP TO GET
19 ASBESTOS-CAUSED MESOTHELIOMAS. THAT'S ONE PAPER, THE
20 IMPORTANT OCCUPATIONAL EXPOSURE.
21 SECONDLY, SHIPYARD WORK IS WIDELY DESCRIBED IN
22 THE LITERATURE AS A MAJOR SOURCE OF ASBESTOS EXPOSURE.
23 Q. AND THOSE TWO OCCUPATIONS ARE VERY IMPORTANT?
24 A. THERE ARE STUDY AFTER STUDY SHOWING THAT
25 HOUSEHOLD MEMBERS ARE AT RISK OF ASBESTOSIS AND
26 MESOTHELIOMAS, ASBESTOS-RELATED CONDITIONS. NO QUESTION
27 ABOUT IT.
28 AS I POINTED OUT, IT'S HARDER FOR LUNG CANCER,
2914
1 BECAUSE IN CONTRAST TO ASBESTOSIS, WHICH IS ALWAYS CAUSED BY
2 ASBESTOS, AND MESOTHELIOMA, WHICH NEARLY ALWAYS IS, LUNG
3 CANCER HAS MANY OTHER CAUSES, OF WHICH SMOKING, OF COURSE,
4 IS THE MAIN ONE.
5 IT'S MUCH HARDER IN STUDIES, SINGLE STUDIES OR IN
6 GROUPS OF STUDIES EVEN, TO PROVE THAT LUNG CANCER RATES ARE
7 INCREASED IN HOUSEHOLD MEMBERS AND THERE ARE NOT ENOUGH
8 STUDIES ON THAT POINT TO PROVE IT.
9 BUT IF I LOOK AT THE OVERALL SCIENTIFIC EVIDENCE
10 LIKE THAT, I END UP SAYING IT'S MORE LIKELY THAN NOT, WHEN
11 YOU HAVE AN AGENT THAT'S SYNERGISTIC WITH SMOKING IN A
12 TEENAGER THAT STARTED SMOKING, THAT THEY ACT JOINTLY IN
13 CAUSING A LUNG CANCER.
14 Q. SO THE SOURCE OF YOUR INFORMATION FOR THIS CASE
15 IS STUDIES THAT YOU'VE READ?
16 A. IT INCLUDES THE SCIENTIFIC STUDIES, YES, COUNSEL.
17 Q. IS THERE ANY SOURCE OTHER THAN A SCIENTIFIC
18 STUDY?
19 A. WELL, YES. THERE IS INFORMATION THAT I HAVE THAT
20 I UNDERSTAND HAS BEEN GIVEN IN COURT BY OTHERS.
21 I HAVE AN UNDERSTANDING OF THE WORK HISTORIES
22 THAT RELATED TO THE FATHER AND THE HUSBAND. I HAVE AN
23 UNDERSTANDING OF HER HISTORY WHEN SHE STARTED SMOKING, BASED
24 ON MATERIAL SENT TO ME.
25 I'M NOT TESTIFYING TO THAT. OTHERS ARE
26 PRESENTING THAT IN COURT.
27 Q. YOU ARE AWARE THAT NONE OF THE TREATING DOCTORS
28 IN THIS CASE HAVE OPINED THAT ASBESTOS IS A CAUSE OF THE
2915
1 LUNG CANCER?
2 A. I DON'T KNOW.
3 Q. YOU ARE AWARE THAT DR. HORN --
4 MR. BROWN: ASKED AND ANSWERED. WE WENT OVER
5 THIS.
6 THE COURT: GO AHEAD. I'LL ALLOW IT.

7 MR. ROSSE: Q. YOU ARE AWARE THAT DR. HORN
8 OPINED HE WOULD NOT FIND THAT ASBESTOS WAS, MORE LIKELY THAN
9 NOT, A CAUSE OF THE LUNG CANCER IN THIS CASE?
10 A. I DON'T KNOW IF HE HAS TESTIFIED. I DON'T KNOW
11 WHAT HE SAID IN COURT.
12 I WAS AWARE THAT HE WASN'T SURE -- AT LEAST MY
13 RECOLLECTION IS THAT HE WASN'T SURE IF ASBESTOS WAS OR WAS
14 NOT INVOLVED, BUT THAT'S ALL I CAN SAY.
15 Q. BASED ON YOUR ARTICLES, YOUR REVIEW OF THE
16 MEDICAL TREATING DOCTORS, DR. HORN'S OPINION, IN LIGHT OF
17 ALL OF THAT, YOUR OPINION IS THAT IT'S TO A REASONABLE
18 DEGREE OF MEDICAL PROBABILITY PLAINTIFF'S LUNG CANCER WAS
19 CAUSED BY ASBESTOS?
20 A. MORE LIKELY THAN NOT, IT CONTRIBUTED TO
21 CAUSATION, ALONG WITH THE CIGARETTE SMOKING, IN MY VIEW.
22 MR. ROSSE: THANK YOU, DOCTOR.
23 THE COURT: OKAY. WHO IS NEXT? MR. FURR?
24 MR. FURR: YES.
25
26 CROSS-EXAMINATION
27 BY MR. FURR: Q. GOOD MORNING, DR. SMITH.
28 A. GOOD MORNING.
2916
1 Q. MY NAME IS JEFF FURR.
2 YOU AND I MET IN EARLY DECEMBER WHEN I TOOK YOUR
3 DEPOSITION; CORRECT, SIR?
4 A. WAS IT EARLY DECEMBER? YES, I THINK SO.
5 Q. YES. WHEN MR. ROSSE BEGAN CROSS-EXAMINING YOU
6 YESTERDAY, YOU MENTIONED THAT YOU HAD IN FACT TESTIFIED A
7 LARGE NUMBER OF TIMES PREVIOUSLY IN COURT, HAVEN'T YOU, SIR?
8 A. YES.
9 Q. IN FACT, YOU ESTIMATED IN THE PAST, THAT YOU'VE
10 TESTIFIED OVER 100 TIMES, HAVEN'T YOU, SIR?
11 A. YES.
12 Q. AND YOU HAVE TESTIFIED IN THE PAST FOR
13 MS. CHABER'S LAW FIRM, HAVEN'T YOU?
14 A. YES.
15 Q. YOU'VE TESTIFIED IN THE PAST FOR HER LAW FIRM IN
16 ASBESTOS CASES, HAVEN'T YOU, SIR?
17 A. CORRECT.
18 Q. AND YOU'VE TESTIFIED IN THE PAST FOR HER LAW FIRM
19 IN TOBACCO CASES, HAVEN'T YOU, SIR?
20 A. IN ONE, YES.
21 Q. YES. DO YOU STILL CHARGE \$350 AN HOUR FOR YOUR
22 WORK ON LEGAL CASES?
23 A. IT'S \$400 AN HOUR NOW.
24 Q. IT'S 400 NOW.
25 AND SIR, ARE YOU STILL DERIVING ABOUT A THIRD OF
26 YOUR INCOME FROM WORKING ON LEGAL CASES?
27 A. YES.
28 Q. I WASN'T CLEAR ABOUT SOMETHING YESTERDAY. YOU
2917
1 TOLD MR. ROSSE THAT YOU DON'T TREAT PATIENTS.
2 BUT AM I CORRECT, SIR, THAT YOU HAVEN'T ACTUALLY
3 TREATED CANCER PATIENTS FOR ABOUT 30 YEARS?
4 A. MY ACTUAL TREATMENT RESPONSIBILITY WOULD DATE
5 BACK TO 1971.
6 Q. 29 YEARS?
7 A. 29.
8 Q. AND YOU NEVER MET MRS. WHITELEY, DID YOU, SIR?
9 A. CORRECT.
10 Q. YOU WEREN'T INVOLVED IN HER MEDICAL CARE OR
11 CONSULTED BY HER PHYSICIANS IN ANY WAY, WERE YOU?

12 A. CORRECT.
13 Q. DURING YOUR DIRECT EXAMINATION, YOU TALKED ABOUT
14 TOBACCO AND ASBESTOS AND MARIJUANA WITH RESPECT TO FACTORS
15 THAT MAY HAVE BEEN INVOLVED IN MRS. WHITELEY'S LUNG CANCER;
16 CORRECT, SIR?
17 A. CORRECT.
18 Q. NOW, THERE IS NO MEDICAL TEST THAT YOU OR ANYONE
19 COULD CONDUCT ON TISSUE TAKEN FROM HER LUNG CANCER TO
20 DETERMINE WHICH OF THOSE FACTORS WAS INVOLVED AND TO WHAT
21 EXTENT THOSE FACTORS WERE INVOLVED; IS THAT CORRECT?
22 A. CORRECT.
23 Q. LET ME ASK YOU SOME QUESTIONS ABOUT THIS CHART UP
24 HERE.
25 I'M LOOKING AT WHAT WAS MARKED AS PLAINTIFFS'
26 EXHIBIT 1917.
27 THAT'S A CHART THAT YOU DREW, ISN'T IT, SIR?
28 A. YES.
2918
1 Q. AND YOU DREW THAT CHART TO ILLUSTRATE WHAT YOU
2 DESCRIBED AS THE SYNERGISTIC REACTION BETWEEN SMOKING AND
3 ASBESTOS EXPOSURE; IS THAT CORRECT?
4 A. CORRECT.
5 Q. AND I BELIEVE YOU TOLD US THAT THERE WERE A
6 NUMBER OF STUDIES, APPROXIMATELY 10 TO 12 OR SO, THAT YOU
7 BELIEVED DEMONSTRATED THE SYNERGISTIC REACTION BETWEEN
8 SMOKING AND ASBESTOS EXPOSURE; IS THAT CORRECT?
9 A. NOT QUITE. CONSIDERED OVERALL. DEMONSTRATED
10 INDIVIDUALLY, SOME OF THE STUDIES ARE INCONCLUSIVE.
11 WHEN ONE LOOKS AT THE OVERALL, IT'S A CLEAR
12 SITUATION.
13 Q. THE STUDIES THAT YOU'RE REFERRING TO AND THAT YOU
14 RELIED UPON IN DEVELOPING THIS CHART WERE STUDIES IN WHICH
15 THE ASBESTOS EXPOSURE HAD BEEN AN OCCUPATIONAL EXPOSURE; IS
16 THAT CORRECT, SIR?
17 A. CORRECT.
18 Q. NOW, AS YOU AND MR. ROSSE TALKED ABOUT AT SOME
19 LENGTH, THAT'S NOT THE TYPE OF EXPOSURE THAT MRS. WHITELEY
20 HAD, IS IT, SIR?
21 A. CORRECT.
22 Q. MRS. WHITELEY HAD A NONOCCUPATIONAL OR
23 PARAOCUPATIONAL EXPOSURE?
24 A. CORRECT.
25 Q. AM I CORRECT, DOCTOR, THERE ARE NO STUDIES THAT
26 ARE PUBLISHED THAT DEMONSTRATE THIS TYPE OF SYNERGISTIC
27 REACTION BETWEEN NONOCCUPATIONAL ASBESTOS EXPOSURE AND
28 CIGARETTE SMOKING?
2919
1 A. CORRECT. THERE ARE NO STUDIES THAT HAVE
2 ADDRESSED THAT TOPIC.
3 Q. JUST A FEW MORE QUESTIONS, DR. SMITH.
4 AM I CORRECT, SIR, THAT IT IS YOUR OPINION THAT
5 ADULTS IN THE UNITED STATES SHOULD NOT BE FREE TO CHOOSE TO
6 SMOKE CIGARETTES?
7 A. CORRECT.
8 Q. AM I CORRECT, SIR, THAT YOU WOULD LIKE TO SEE THE
9 COMPANIES THAT MANUFACTURE AND SELL CIGARETTES PUT OUT OF
10 BUSINESS?
11 A. CORRECT.
12 Q. AND AM I CORRECT, SIR, THAT YOU WOULD LIKE TO SEE
13 THE COMPANIES THAT MANUFACTURE AND SELL CIGARETTES PUT OUT
14 OF BUSINESS BY LAWSUITS LIKE THIS ONE?
15 A. CORRECT.
16 CAN I EXPLAIN MY ANSWER?

17 Q. IF MR. BROWN WANTS YOU TO EXPLAIN YOUR ANSWER,
18 WE'LL TALK ABOUT THAT.
19 AND AM I CORRECT, SIR, THAT ONE OF THE REASONS
20 THAT YOU GET INVOLVED IN LAWSUITS LIKE THIS ONE IS BECAUSE
21 YOU HOPE THAT THESE TYPE OF LAWSUITS MIGHT RESULT IN THE
22 TOBACCO MANUFACTURERS BEING BANKRUPTED BY THE VERDICTS?
23 A. CORRECT. AND CAN I EXPLAIN MY ANSWER?
24 MR. FURR: IF MR. BROWN WANTS YOU TO, WE'LL TALK
25 IT ABOUT, SIR.
26 THANK YOU VERY MUCH.
27 MR. BROWN: I GUESS WE NEED TO TALK ABOUT IT
28
2920

1 REDIRECT EXAMINATION
2 BY MR. BROWN: Q. LET ME ASK YOU: WHY DO YOU
3 FEEL THAT WAY?
4 MR. FURR: OBJECTION. RELEVANCE. 352.
5 THE COURT: I'M PROBABLY GOING TO SUSTAIN THAT.
6 IF YOU WANT TO HAVE A SIDEBAR WITH ME, YOU CAN.
7 THAT'S A VERY OPEN-ENDED QUESTION. I DON'T KNOW
8 WHAT THE WITNESS IS GOING TO SAY.
9 SO MY TEMPTATION WOULD BE TO SUSTAIN. IF YOU
10 WANT TO HAVE A SIDEBAR AND EXPLAIN TO ME WHAT THIS WITNESS
11 IS GOING TO SAY OR WHAT YOU THINK, OR TALK TO HIM ABOUT IT,
12 I'LL CONSIDER IT THEN.
13 IN THE ABSTRACT, I'M GOING TO SUSTAIN, BECAUSE I
14 DON'T KNOW.
15 MR. BROWN: I BETTER MOVE FROM THE ABSTRACT.
16 THE COURT: IF YOU WANT TO BE MORE SPECIFIC,
17 THAT'S ANOTHER WAY OF DOING IT.
18 MR. BROWN: Q. YOU WERE ASKED THOSE QUESTIONS
19 IN YOUR DEPOSITION BY MR. FURR; RIGHT?
20 A. I WAS.
21 Q. AND YOU EXPLAINED TO HIM WHY IN THE DEPOSITION,
22 DIDN'T YOU?
23 A. I DID.
24 Q. I WILL JUST LEAVE IT THERE.
25 JUST A COUPLE OF THINGS. OH, SOMETHING ELSE MR.
26 FURR ASKED YOU ABOUT.
27 YOU DIDN'T SEE LESLIE WHITELEY AND YOU DON'T
28 TREAT PATIENTS.
2921

1 WHEN EPIDEMIOLOGISTS DO STUDIES AND REVIEWS AND
2 PREPARE FOR CASES LIKE THIS, DO THEY EVER SEE THE PATIENTS
3 OR SEE THE PLAINTIFFS?
4 A. NO.
5 Q. DO EPIDEMIOLOGISTS TREAT PATIENTS?
6 A. NO.
7 Q. YOU WERE ASKED, I THINK BY MR. ROSSE, WHETHER
8 TROY WHITTEKER HAD PLEURAL PLAQUES, ASBESTOSIS.
9 LET ME ASK YOU THIS: IN TERMS OF YOUR OPINION,
10 IS IT SIGNIFICANT -- IS IT SIGNIFICANT THAT OTHER FAMILY
11 MEMBERS DON'T HAVE APPARENTLY SOME ASBESTOS DISEASE?
12 A. NO.
13 Q. WHY NOT?
14 A. BECAUSE THE QUESTION IS WHETHER OR NOT THERE'S
15 ASBESTOS EXPOSURE IN THE HOME, NOT WHETHER OR NOT THE FATHER
16 GOT ASBESTOS DISEASE. IT DOESN'T IMPACT ON THE RISK TO THE
17 FAMILY MEMBER, UNLESS IT MEANS THERE WAS A MUCH HIGHER
18 EXPOSURE.
19 BUT SOME WORKERS GET ASBESTOSIS, SOME DON'T, AT
20 ALL LEVELS OF EXPOSURE.
21 SO IT'S NOT AN OVERRIDING FACTOR AT ALL. IN

22 FACT, IT'S NOT EVEN IMPORTANT HERE, CONSIDERING THE DISEASE
23 IN THE DAUGHTER.

24 Q. WOULD INSULATORS WORKING IN SHIPYARDS AND PERHAPS
25 POWER PLANTS BE THE MOST HEAVILY EXPOSED OCCUPATIONAL
26 WORKERS?

27 IF THERE'S SOMEBODY ELSE, TELL ME WHO THEY ARE.

28 A. WELL, IN THAT SETTING, THE HIGHEST EXPOSURE
2922

1 OCCURS -- ACTUALLY, THE HIGHER AIR LEVELS OCCUR FROM
2 SWEEPING AND CLEANING UP.

3 SOMETIMES, THERE ARE OTHER PEOPLE THAT DO THAT
4 CLEANING UP OTHER THAN THE INSULATORS. THEY WOULD HAVE
5 HIGH-INTENSITY EXPOSURES. IT REALLY DEPENDS ON THE JOB
6 ACTIVITY AND WHAT'S BEING DONE AND HOW MUCH DUST IS IN THE
7 AIR.

8 AND AS A TOTAL GROUP, INSULATORS IN THE PAST HAVE
9 HAD WIDESPREAD HIGH-INTENSITY EXPOSURE, BUT I WOULDN'T PICK
10 THEM OUT AND SAY THEY WERE THE HIGHEST.

11 Q. OKAY. LET ME FRAME THE QUESTION THIS WAY THEN:
12 AMONG THOSE, WHOEVER THEY MIGHT BE, WHO HAVE THE HIGHEST
13 OCCUPATIONAL EXPOSURE, THE VERY HIGHEST, DO THEY ALL GET
14 ASBESTOSIS?

15 A. NO.

16 Q. DO THEY ALL GET PLEURAS PLAQUES?

17 A. NO.

18 Q. DO THEY ALL GET LUNG CANCER?

19 A. NO.

20 Q. NOW, THERE'S A LATENCY IN ASBESTOS DISEASE;
21 RIGHT?

22 A. CORRECT.

23 Q. WHAT IS THAT?

24 A. MOST CASES DON'T APPEAR UNTIL MORE THAN 20 YEARS
25 AFTER THE FIRST EXPOSURE. THEY CAN OCCUR SOONER, BUT
26 USUALLY, IT'S MORE THAN 20 YEARS AFTER.

27 Q. IS IT UNCOMMON FOR PEOPLE HEAVILY EXPOSED IN
28 SHIPYARDS OR WHEREVER IN THEIR 20S, 30S, SOMETIMES 40S, NOT
2923

1 TO DEVELOP AN ASBESTOS DISEASE UNTIL THEY'RE IN THEIR 80S?
2 IS THAT CORRECT?

3 A. I'M SORRY. LET ME MAKE SURE.

4 SOMETIMES IT'S A VERY LONG LATENCY AND THE
5 ASBESTOS DISEASE DOESN'T DEVELOP UNTIL A MUCH OLDER AGE.

6 I DON'T KNOW OF STUDIES THAT HAVE SPECIFICALLY
7 LOOKED AT THE 80-YEAR-OLD GROUP.

8 Q. OKAY.

9 A. 60 YEARS OLD AND 70 YEARS OLD.

10 Q. I GUESS -- LET ME ASK THIS: IS TROY WHITTEKER AT
11 AN AGE WHERE HE CAN RELAX? IF HE HASN'T GOT IT BY NOW, HE'S
12 NEVER GOING TO GET IT?

13 A. NO.

14 Q. YOU WERE ASKED YESTERDAY ABOUT AN ARTICLE, I
15 THINK IT WAS IN THE NEW ENGLAND JOURNAL OF MEDICINE. IT WAS
16 MARKED IN EVIDENCE -- NOT IN EVIDENCE, BUT FOR
17 IDENTIFICATION. I DON'T SEEM TO HAVE IT HANDY HERE FOR SOME
18 REASON.

19 THERE WE GO. MARKED AS DEFENSE EXHIBIT 8001.
20 DO YOU HAVE THAT UP THERE? IT'S THE ONE THAT'S
21 BY CAMUS.

22 A. THE FIRST AUTHOR. OKAY.

23 Q. LET ME GIVE YOU THIS, SO YOU DON'T HAVE TO LOOK
24 FOR IT.

25 A. OKAY.

26 Q. WAS THERE AN EDITORIAL PUBLISHED WITH THAT

27 ARTICLE IN THAT JOURNAL?
28 A. YES.
2924
1 Q. AND DID THAT EDITORIAL REFLECT YOUR ANALYSIS --
2 YOUR VIEW OF HOW THE ARTICLE OUGHT TO BE INTERPRETED AND
3 READ?
4 A. YES. I THINK THERE'S SOME KEY POINTS IN THE
5 EDITORIAL, WHICH I CERTAINLY AGREE WITH.
6 MR. BROWN: ALL RIGHT. AND I HAVE HERE A COPY
7 OF THE EDITORIAL.
8 I'D LIKE TO MARK THIS AS IN NEXT IN EVIDENCE.
9 THE COURT: NEXT IN ORDER FOR IDENTIFICATION,
10 YOU MEAN?
11 MR. BROWN: YES. I AM NOT TRYING TO SNEAK THIS
12 INTO EVIDENCE. I MISSPOKE.
13 THE CLERK: PLAINTIFFS' EXHIBIT 1919.
14 (DOCUMENT MORE PARTICULARLY
15 LISTED IN THE INDEX MARKED
16 FOR IDENTIFICATION PLAINTIFFS'
17 EXHIBIT # 1919)
18 MR. BROWN: I'LL JUST HAND THIS UP, YOUR HONOR.
19 THE COURT: SURE. THANKS.
20 MR. BROWN: Q. WHAT IS THE PORTION OF THIS
21 EDITORIAL THAT REFLECTED YOUR OPINION?
22 A. I THINK YOU HAVE MY COPY.
23 Q. DO I?
24 A. THERE'S ONE WITH SOME BLUE HIGHLIGHTING ON IT.
25 Q. ON THE FIRST PAGE?
26 MS. CHABER: HERE.
27 THE WITNESS: IT'S OVER THERE (INDICATING).
28 MR. BROWN: (TO MS. CHABER:) WHAT WOULD I DO
2925
1 WITHOUT YOU?
2 Q. THE QUESTION IS: COULD YOU POINT OUT TO US
3 WHERE IN THIS EDITORIAL THE PERSON WHO WROTE THE EDITORIAL
4 REFLECTS YOUR VIEWS?
5 MR. ROSSE: OBJECTION, YOUR HONOR. HEARSAY.
6 MR. BROWN: THIS IS ALL PART OF THE SAME ARTICLE
7 HE MARKED. THIS WAS PUBLISHED RIGHT WITH IT. IT DEALT WITH
8 THE ARTICLE THAT WAS MARKED BY MR. ROSSE.
9 MR. ROSSE: IT'S NOT PART OF THE ARTICLE.
10 THE COURT: IS IT YOUR TESTIMONY THAT THIS IS
11 NOT PART OF -- IS IT CORRECT, THIS IS NOT PART OF THE SAME
12 ARTICLE? RIGHT?
13 THE WITNESS: CORRECT, YOUR HONOR. IT'S
14 PUBLISHED AT THE SAME TIME IN THE SAME JOURNAL AS A DIRECT
15 COMMENTARY ON THE ARTICLE.
16 THE COURT: YOU ANSWERED MY QUESTION.
17 YOU OBJECT TO THIS ON THE GROUNDS THAT IT'S NOT
18 THE SAME ARTICLE?
19 MR. ROSSE: IT'S HEARSAY. IT'S NOT THE SAME
20 ARTICLE.
21 THE COURT: I THINK THAT'S CORRECT. I THINK I'M
22 GOING TO SUSTAIN IT.
23 MR. BROWN: ALL RIGHT. LET'S GO BACK TO THE
24 ARTICLE ITSELF.
25 Q. I GUESS THERE WAS A PORTION OF THAT ARTICLE THAT
26 WAS READ TO YOU, AND I THINK IT MIGHT BE HIGHLIGHTED HERE ON
27 THE FRONT PAGE.
28 DO YOU SEE THAT YELLOW HIGHLIGHTING DOWN THERE IN
2926
1 THE LOWER LEFT?
2 A. YES.

3 Q. THAT WAS READ TO YOU BY MR. ROSSE.
4 WOULD YOU READ THAT AGAIN.
5 A. IT SAYS: "WE FOUND NO MEASURABLE EXCESS RISK OF
6 DEATH DUE TO LUNG CANCER AMONG WOMEN IN TWO
7 CHRYSOTILE-ASBESTOS-MINING REGIONS."
8 Q. AND IN VIEW OF THE FACTS AND THE REST OF THE
9 ARTICLE THAT WAS PRESENTED, HOW DID YOU INTERPRET THAT? NOT
10 SO MUCH IT INTERPRET.
11 HOW DID YOU VIEW IT? WHAT DID YOU THINK ABOUT
12 THAT?
13 A. THERE WERE SEVERAL PARTS.
14 FIRSTLY, THERE WERE EXCESS MESOTHELIOMAS.
15 USUALLY, YOU FIND SOME EXCESS LUNG CANCERS WHERE THAT
16 OCCURS, BUT THE NUMBER WAS SMALL. AND HERE, THERE WAS 70
17 LUNG CANCERS ANYWAY.
18 SO EVEN IF YOU HAD FOUR EXCESS LUNG CANCERS OR
19 SEVEN, YOU'D STILL ONLY GET A RELATIVE RISK OF 1.1. SO IN
20 THAT REGARD, THE STUDY IS INCONCLUSIVE.
21 THE SECOND PART, THOUGH, THIS WAS EXPOSURE
22 RELATED TO MINING. AND MINING HAS NOT BEEN A MAJOR SOURCE
23 OF ASBESTOS DISEASE IN THE WORLD. AND IT'S WIDELY DESCRIBED
24 IN THE LITERATURE.
25 AND IT IS MY OPINION THAT THE REASON WHY THE
26 RISKS ARE MUCH LOWER TO MINERS THAN PROJECTED FROM OTHERS IS
27 THAT IN THE MINING SITUATION ARE NOT THE FINE PARTICLE
28 INHALATION DEEP INTO THE LUNGS WHICH HAS OCCURRED WHERE
2927
1 INSULATION HAS BEEN MADE IN FACTORIES OR WHERE IT'S BEEN
2 ACTUALLY USED.
3 AND THAT'S WHAT OTHERS HAVE OPINED EXTENSIVELY,
4 INCLUDING THE USEPA, AS TO WHY IT IS THAT THE RISK MAY BE
5 LOWER ASSOCIATED WITH MINING THAN IN OTHER SETTINGS, SUCH AS
6 INSULATION WORK.
7 Q. AND ON THE FIRST POINT, YOUR POINT WAS THAT IF
8 THE MINERS HAVE A LOW INCIDENCE OF LUNG CANCER, THEN YOU
9 WOULDN'T EXPECT PEOPLE IN THEIR FAMILIES TO HAVE A
10 SIGNIFICANT LUNG CANCER RATE?
11 A. RIGHT. YOU MIGHT NOT PICK IT UP. THERE MAY BE
12 SOME RISK THERE, BUT LOW LEVELS OF RISK.
13 EVEN THOUGH ACTUAL CASES MAY BE CAUSED, WE CAN'T
14 PROVE IT ONE WAY OR ANOTHER.
15 THIS IS A SETTING WHERE A SINGLE STUDY LIKE THIS
16 IS INCONCLUSIVE, YES.
17 Q. OKAY. JUST A FINAL QUESTION.
18 I WANT YOU FOCUS ON 1972 AND 1972 EXPOSURE. AND
19 THOSE ARE THE TWO YEARS -- TWO OF THE YEARS IN WHICH
20 MR. WHITTEKER, TROY WHITTEKER, WAS WORKING AS A PIPEFITTER
21 AT THE ORMOND BEACH PLANT.
22 AND I'D LIKE TO ASK YOU THIS: WOULD IT BE YOUR
23 OPINION THAT THE EXPOSURES THAT LESLIE WHITELEY GOT IN THOSE
24 TWO YEARS, TAKEN BY THEMSELVES, WERE SUFFICIENT FOR YOU TO
25 CONSIDER THEM A SUBSTANTIAL FACTOR IN THE DEVELOPMENT OF THE
26 RISK OF HER LUNG CANCER?
27 A. YES.
28 MR. BROWN: THAT'S ALL I HAVE.
2928
1 THE COURT: ANYTHING FURTHER BY ANYBODY FOR DR.
2 SMITH?
3 MR. ROSSE: YES, YOUR HONOR.
4 THE COURT: YES, MR. ROSSE.
5
6 RECROSS-EXAMINATION
7 BY MR. ROSSE: Q. GOING BACK TO THIS STUDY,

8 DOCTOR. THERE WERE AN EXCESS NUMBER OF MESOTHELIOMAS FOUND
9 IN THIS STUDY; CORRECT?

10 A. THAT'S CORRECT.

11 Q. ISN'T IT TRUE THAT 5 PERCENT OF THE WOMEN IN THIS
12 STUDY WORKED IN THE BAGGING DIVISION OF THE MILL?

13 A. THERE WERE SOME THAT WORKED. I DON'T KNOW
14 EXACTLY WITHOUT LOOKING.

15 Q. ISN'T IT TRUE THAT SEVERAL OF THE EXCESS
16 MESOTHELIOMAS OR SEVERAL OF THE MESOTHELIOMA CASES THAT CAME
17 OUT OF THAT 5 PERCENT WORKED IN THE MILL, NOT THE HOUSEHOLD
18 EXPOSURES?

19 A. I DON'T RECALL. THERE WERE SOME LINKED -- SOME
20 OCCUPATIONAL EXPOSURES.

21 SOME OF THE MESOTHELIOMAS THAT OCCURRED IN THE
22 WOMEN ARE DUE TO SOME OCCUPATIONAL EXPOSURE, BUT NOT ALL OF
23 THEM.

24 Q. YOU MENTIONED THAT THERE WAS A SLIGHT INCREASE IN
25 LUNG CANCERS; I THINK YOU SAID 70 VERSUS 77?

26 A. NO. I WAS POINTING OUT THAT IN THIS STUDY IN
27 THESE WOMEN, THERE WAS 70 LUNG CANCERS ANYWAY.

28 SO IF YOU HAD FOUR MORE OR SEVEN MORE OR
2929

1 SOMETHING LIKE THAT, IT'S ALMOST IMPOSSIBLE TO PICK UP IN A
2 STUDY LIKE THIS A SMALL INCREMENT.

3 SO LET'S SAY THERE ARE 70. MAYBE THERE SHOULD
4 HAVE BEEN 66, BUT ASBESTOS CONTRIBUTED TO FOUR. WE JUST
5 DON'T KNOW.

6 THERE IS TOTAL IMPRECISION IN TRYING TO PICK UP
7 LUNG CANCER RISKS IN THIS PARTICULAR STUDY.

8 Q. CONSIDERING 5 PERCENT OF THE WOMEN IN THE STUDY
9 WERE OCCUPATIONALLY EXPOSED, YOU MIGHT HAVE EXPECTED TO SEE
10 SOME LUNG CANCER INCREASE FROM THOSE WOMEN, WOULDN'T YOU?

11 A. AGAIN, NOT IN THE MANNER DEPICTED IN THE DOMAIN
12 OF WHAT WE CALL A DETECTABLE INCREASED RISK. IN A STUDY
13 LIKE THIS, THE NUMBERS JUST DON'T ALLOW A FIRM CONCLUSION.

14 Q. THAT'S BECAUSE THERE'S WHAT YOU CALL CHANCE?

15 A. NO. THAT'S BECAUSE LUNG CANCER IS COMMON. IT
16 DOES OCCUR. IT'S WIDESPREAD. SO THERE'S CASES OF LUNG
17 CANCER MAINLY DUE TO SMOKING.

18 NOW, IF YOU WANT TO DETECT AN INCREMENT FROM
19 ANOTHER CAUSE -- AND THERE'S A LARGE NUMBER ALREADY DUE TO
20 SMOKING -- THAT ESTIMATE MAKES IT VERY HARD IN STUDIES
21 ULTIMATELY. FROM THE STATISTICAL SIDE, IT IS A CHANCE
22 ISSUE.

23 BUT THE FUNDAMENTAL REASON IS THAT A LOT OF LUNG
24 CANCER OCCURS FOR REASONS OTHER THAN ASBESTOS EXPOSURE.

25 Q. CONSIDERING YOU HAVE OPINED THAT SYNERGY ACCOUNTS
26 FOR 70 LUNG CANCERS AND THERE WAS A RELATIVE RISK OF TWO
27 FROM THE ASBESTOS EXPOSURE, WOULDN'T WE EXPECT TO SEE ABOUT
28 140?

2930

1 A. I DON'T UNDERSTAND THE QUESTION.

2 Q. WOULDN'T YOU EXPECT TO SEE TWICE AS MANY LUNG
3 CANCERS?

4 A. I DON'T UNDERSTAND YOUR QUESTION, WHAT YOU'RE
5 REFERRING TO.

6 Q. YOU SAID THAT ASBESTOS IN SMOKING ACTS
7 SYNERGISTICALLY?

8 A. CORRECT.

9 Q. SO IF THERE'S A RELATIVE RISK OF DEVELOPING LUNG
10 CANCER FROM ASBESTOS OF TWO, AND WE EXPECTED TO SEE 70 LUNG
11 CANCERS FROM SMOKING, WOULDN'T WE EXPECT TO SEE ABOUT 140
12 LUNG CANCERS IF THEY ACT SYNERGISTICALLY?

13 A. WHERE DID YOU GET THE RELATIVE RISK OF TWO FROM?
14 Q. IN A HYPOTHETICAL, DOCTOR.
15 A. I'M SORRY. IT DOESN'T MAKE EPIDEMIOLOGICAL
16 SENSE.
17 Q. WHAT WAS THE RELATIVE RISK FOR NONOCCUPATIONAL
18 EXPOSURE TO ASBESTOS?
19 A. IT DEPENDS ON THE EXPOSURE. IT'S NOT CLEARLY
20 ESTABLISHED EXACTLY WHAT THE NUMBERS ARE.
21 IN SOME OF THE STUDIES THAT WE TALKED ABOUT, THE
22 RISKS ARE THE ORDER OF 50 PERCENT INCREASE, BUT IT'S GOING
23 TO VARY, DEPENDING ON THE EXPOSURE LEVEL.
24 Q. IN FACT, IN THE CANADIAN MINER STUDY, THERE WAS
25 NO INCREASED RISK?
26 A. THAT'S CORRECT.
27 Q. NOW, YOU TESTIFIED THAT THE MINERS DON'T HAVE AS
28 HIGH A RATE OF DISEASE BECAUSE OF THE INHALATION OF FIBERS?
2931
1 A. IT IS CORRECT. THEIR RATE OF DISEASE IS MUCH
2 LOWER THAN FACTORY WORKERS OR THOSE WHO WORK WHERE
3 INSULATION IS BEING USED. IF YOU LOOK AT THE PREDICTIONS,
4 YES.
5 Q. WHAT ABOUT MILLERS?
6 A. I DON'T HAVE SEPARATE NUMBERS FOR MILLERS.
7 Q. BUT A MILLER -- A MILL IS WHERE THEY TAKE THE
8 ROCK AND THEY CRUSH IT, AND THAT CREATES EXTREMELY FINE
9 FIBER, DOESN'T IT?
10 A. WELL, FIRST, MILLING IS ALL PART OF THE SAME
11 STUDIES THAT SHOW LOWER ASBESTOS DISEASE RATES.
12 BUT WHEN YOU GET WITHIN IT, I'M NOT AN EXPERT ON
13 THE DETAILS OF WHAT HAPPENS IN THE MINING. ALL I CAN TELL
14 YOU, THAT THE STUDIES DON'T FIND HIGH -- AS HIGH ASBESTOS
15 DISEASE RISKS AS YOU'D EXPECT.
16 AND ANY SUBSET LIKE THAT, I JUST CAN'T ANSWER.
17 Q. THIS ISN'T THE FIRST STUDY OF THETFORD MINES IN
18 QUEBEC, CANADA, IS IT?
19 A. NO.
20 Q. IN FACT, SEVERAL OF THOSE STUDIES HAVE FOUND
21 HIGHER RATES OF ASBESTOSIS, LUNG CANCERS IN ANY STUDY OF
22 ASBESTOS EXPOSURE; ISN'T THAT CORRECT?
23 A. NO. IT'S NOT ABSOLUTELY NOT CORRECT.
24 IN FACT, THERE IS A STUDY THAT CAME OUT RECENTLY
25 SUGGESTING THERE IS VERY LITTLE INCREASE IN LUNG CANCER,
26 CERTAINLY MUCH LESS, EVEN IF YOU PREDICT MANY THOUSANDS OF
27 MINERS.
28 SO QUITE LARGE NUMBERS DID GET ASBESTOSIS. BUT
2932
1 IF YOU LOOK AT THE ACTUAL RISKS AND WHERE ASBESTOS DISEASE
2 IS OCCURRING, OVERWHELMINGLY IT'S BEEN IN CONSTRUCTION
3 TRADES, IN SHIPYARDS, AND THEN BEHIND THAT GROUP, THEN
4 FACTORIES, NOT IN THE MINERS.
5 MR. ROSSE: NOTHING FURTHER, YOUR HONOR.
6 THE COURT: DOES ANYBODY HAVE ANY FURTHER
7 QUESTIONS FOR DR. SMITH?
8 ALL RIGHT. THERE ARE NO TAKERS.
9 SO DR. SMITH, YOU MAY STEP DOWN.
10 (WITNESS EXCUSED)
11 THE COURT: WHAT IS THE NAME OF OUR NEXT
12 WITNESS, PLEASE?
13 MR. BROWN: MR. MONDT.
14 THE COURT: WHO?
15 MR. BROWN: MONDT, M-U-N-D-T.
16 THE COURT: THANK YOU.
17 THE CLERK: PLEASE COME FORWARD. PLEASE STAND

18 RIGHT HERE AND RAISE YOUR RIGHT HAND.
19 TESTIMONY OF
20 DONALD RAYMOND MONDT,
21 A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN
22 DULY SWORN, TESTIFIED AS FOLLOWS:
23 THE CLERK: PLEASE STATE YOUR NAME.
24 THE WITNESS: DONALD RAYMOND MONDT, M-O-N-D-T.
25 THE CLERK: THANK YOU. PLEASE TAKE THE STAND.
26
27 DIRECT EXAMINATION
28 BY MR. BROWN: Q. MR. MONDT, YOU ARE RETIRED
2933
1 NOW, AREN'T YOU?
2 A. YES, I AM.
3 Q. AND BEFORE YOU RETIRED, YOU WERE AN INSULATOR?
4 A. YES, I WAS.
5 Q. IN THE LATE '60S AND FOR ABOUT 18 YEARS
6 THEREAFTER, DID YOU WORK OFF AND ON FOR THE METALCLAD
7 CORPORATION?
8 A. YES, I DID.
9 Q. WHAT DID YOU DO FOR THE COMPANY?
10 A. ASBESTOS WORKER, PIPEFITTER, PIPE INSULATOR.
11 Q. WHAT KIND OF PROJECTS DID YOU WORK ON WHEN YOU
12 WERE WORKING FOR METALCLAD?
13 A. MAINLY IN HEAVY INDUSTRY, OIL REFINERIES,
14 POWERHOUSES.
15 Q. DID THAT INCLUDE WORKING ON POWERHOUSES IN THE
16 VENTURA AREA?
17 A. YES.
18 Q. DID YOU WORK AT THE ORMOND BEACH POWERHOUSE?
19 A. YES, I DID.
20 Q. DID YOU WORK THERE SOMETIME IN THE '70S?
21 A. I WORKED AT ORMOND BEACH THE SECOND DAY OF
22 JANUARY, 1973, FOR TWO MONTHS.
23 Q. FOR ABOUT TWO MONTHS?
24 A. RIGHT.
25 Q. UP UNTIL MARCH?
26 A. RIGHT, YES.
27 Q. AND YOU WORKED FOR METALCLAD BEFORE THAT?
28 A. YES, I HAD.
2934
1 Q. AND DID YOU KNOW THE CREW, THE MEMBERS OF THE
2 CREW THAT YOU HAD WORKED WITH, MEMBERS OF THE CREW THAT WERE
3 AT ORMOND WHEN YOU REPORTED ABOARD?
4 A. YES. I HAD WORKED -- USUALLY, YOU WORK WITH
5 THOSE INSULATORS OFF AND ON THROUGHOUT YOUR PERIOD OF WORK,
6 I MEAN, THROUGH THE YEARS, OFF AND ON.
7 Q. HOW LONG HAD THE PEOPLE IN THE CREW THAT YOU KNEW
8 BEEN WORKING THERE AT THE TIME YOU GOT THERE?
9 MR. ROSSE: OBJECTION, YOUR HONOR. CALLS FOR
10 HEARSAY.
11 THE COURT: SUSTAINED.
12 MR. BROWN: Q. THE UNION THAT YOU WERE WORKING
13 IN, THE CREW, THE PEOPLE YOU KNEW, THEY WERE WORKING ON THE
14 SAME UNIT WHEN YOU GOT THERE?
15 A. YES. MOST OF THEM WERE THERE PRIOR TO, BEFORE I
16 GOT THERE.
17 MR. ROSSE: OBJECTION, YOUR HONOR. HEARSAY.
18 MOVE TO STRIKE.
19 MR. BROWN: Q. DID YOU --
20 THE COURT: JUST A MINUTE.
21 MR. BROWN: I'M SORRY.
22 THE COURT: I'M GOING TO SUSTAIN AND STRIKE THE

23 LAST ANSWER.
24 HE CAN TESTIFY AS TO WHETHER THEY WERE THERE WHEN
25 HE ARRIVED.
26 MR. BROWN: THAT'S WHAT HE SAID.
27 THE COURT: WHAT?
28 MR. BROWN: I THINK THAT'S WHAT HE SAID.
2935
1 THE COURT: NO, HE SAID THEY WERE THERE BEFORE
2 HE WAS THERE.
3 I'M STRIKING THAT ANSWER. IF YOU WANT TO ASK HIM
4 WHETHER THEY WERE THERE WHEN HE GOT THERE --
5 MR. BROWN: OKAY.
6 THE COURT: -- YOU CAN DO THAT.
7 MR. BROWN: Q. WERE THEY THERE WHEN YOU GOT
8 THERE?
9 A. YES.
10 Q. NOW, WAS THE UNIT THAT YOU WORKED ON JUST ABOUT
11 FINISHED?
12 A. YES, IT WAS.
13 Q. WAS THERE WHAT THEY CALL A BLOWOUT WHEN YOU WERE
14 THERE?
15 A. IT'S CALLED A BLOWDOWN.
16 Q. BLOWDOWN. I'M SORRY.
17 THE COURT: CAN YOU SLOW DOWN?
18 MR. BROWN: I WILL.
19 Q. TELL US WHAT A BLOWDOWN IS.
20 A. WHEN THEY FINISHED UP A UNIT, THEN THEY START THE
21 BOILER UP, AND THEY HAVE TO CLEAN ALL THE LINES, ALL THE
22 HIGH PRESSURE STEAM LINES OUT, SO THEY HAVE TO RUN STEAM
23 THROUGH THEM, VERY HIGH PRESSURE.
24 AND USUALLY, THEY GET THE STEAM ON THE TURBINE
25 LEVEL, NEXT TO THE TURBINE WHERE THEY PUT THESE VALVES, THEY
26 BUILD UP PRESSURE IN THE BOILER.
27 AND THEN THEY OPEN UP VALVES, AND THAT BLOWS WAY
28 UP IN THE AIR, LIKE THE LOUDEST JET ENGINE YOU COULD EVER
2936
1 THINK, 2000 POUNDS OF PRESSURE I JUST ASSUMED,
2 APPROXIMATELY.
3 AND IT BLOWED ALL THE STREAM THROUGH THESE PIPES
4 THAT HAVE JUST BEEN BUILT AND PUT TOGETHER TO CLEAN THEM OUT
5 UNTIL THEY'RE TOTALLY CLEAN.
6 Q. THIS IS SOMETHING THEY DO TOWARD THE END OF THE
7 TIME OF THE CONSTRUCTION OF THE UNIT?
8 A. THAT'S CORRECT.
9 Q. OKAY. NOW, HOW LONG DID YOU WORK FOR METALCLAD?
10 WHEN DID YOU START AND WHEN WAS THE LAST THAT YOU WORKED FOR
11 THEM? I'M TALKING ABOUT OFF AND ON.
12 A. ARE YOU TALKING ABOUT --
13 MR. ROSSE: I'M NOT SURE WHETHER HE IS TALKING
14 ABOUT JOBSITES.
15 MR. BROWN: I WILL REPHRASE.
16 THE COURT: I NEED TO REEMPHASIZE THIS TO YOU.
17 YOU ARE GOING TOO FAST, MR. BROWN, AND THE WITNESS TOO. YOU
18 NEED TO SLOW DOWN, BOTH OF YOU, BECAUSE THE COURT REPORTER
19 IS TRYING TO TAKE THIS DOWN, AND YOU HAVE TO WAIT FOR EACH
20 OTHER TO FINISH BEFORE YOU START TALKING.
21 WE'RE GOING TO ALL BE HERE AND WE ARE GOING TO
22 ALL HEAR EVERYTHING YOU HAVE TO SAY. SO THERE'S NO NEED FOR
23 SPEED HERE. OKAY.
24 SO PLEASE, TAKE IT TO HEART. I CAN'T DO MORE
25 THAN KEEP REPEATING THIS TO YOU, BUT YOU'RE BACK AT THE SAME
26 PACE THAT YOU WERE AT BEFORE WE HAD THIS DISCUSSION THIS
27 MORNING. SO I HAVE GOT TO ASSURE THAT WE DON'T BURN JUDITH

28 OUT. OKAY?
2937
1 MR. BROWN: OKAY.
2 THE COURT: PLEASE.
3 MR. BROWN: Q. WHEN DID YOU START WITH
4 METALCLAD?
5 A. YOU MEAN FOR THE FIRST TIME?
6 Q. YES. APPROXIMATELY.
7 A. PROBABLY, MAYBE 1969.
8 Q. OKAY. AND YOU WORKED, OFF AND ON, ABOUT 18 YEARS
9 WITH THEM?
10 A. THAT'S CORRECT.
11 Q. DID METALCLAD SUPPLY THE PRODUCTS THAT THEY
12 INSTALLED, INCLUDING AT ORMOND BEACH?
13 MR. ROSSE: OBJECTION, YOUR HONOR. CALLS FOR
14 HEARSAY.
15 MR. BROWN: IT CALLS FOR HIS OBSERVATION.
16 THE COURT: OKAY. BUT IF YOU WANT TO KNOW HIS
17 OBSERVATION, YOU NEED TO ASK HIM WHAT HE SAW.
18 THE QUESTION IS SO VAGUE AND GENERAL THAT IT
19 MIGHT WELL CALL FOR MORE THAN THAT.
20 IT'S JUST TOO VAGUE.
21 MR. BROWN: Q. IN THE JOBS YOU WORKED ON,
22 INCLUDING ORMOND BEACH, DID YOU OBSERVE THE METALCLAD PEOPLE
23 PROVIDING AND SUPPLYING THE INSULATION THAT WAS BEING
24 INSTALLED?
25 A. YES.
26 Q. NOW, WHEN WAS THE FIRST TIME THAT YOU SAW BOXES
27 ON A METALCLAD JOB THAT SAID "ASBESTOS-FREE"?
28 A. I DON'T RECALL EVER SEEING ANY ASBESTOS-FREE
2938
1 BOXES UNTIL ABOUT THE MID-70S, SOMEWHERE AROUND '75.
2 Q. OKAY. ALL RIGHT. NOW, JUST IN GENERAL, WHAT WAS
3 THE METALCLAD CREW DOING AT ORMOND BEACH WHILE YOU WERE
4 THERE?
5 A. WE WERE INSULATING ALL THE STEAM LINES, THE
6 TURBINE, THE FUEL OIL LINES.
7 JUST ABOUT ANYTHING THAT HAD TO DO WITH STEAM WAS
8 COVERED -- WAS INSULATED.
9 Q. OKAY. NOW, METALCLAD HAD THIS NAME "METALCLAD."
10 AND DID THAT HAVE SOME RELATIONSHIP TO THE WAY THEY
11 INSULATED PIPES AS OPPOSED TO THE WAY OTHER INSULATORS
12 INSULATED PIPES?
13 MR. ROSSE: OBJECTION, YOUR HONOR. FOUNDATION.
14 CALLS FOR HEARSAY.
15 THE COURT: SUSTAINED.
16 MR. BROWN: Q. YOU WORKED WITH THEM FOR 18
17 YEARS?
18 A. OFF AND ON, YES.
19 Q. YOU WORKED FOR OTHER INSULATION CONTRACTORS?
20 A. MANY, MANY INSULATORS.
21 Q. DID METALCLAD HAVE A UNIQUE WAY OF INSULATING
22 SOME OF THE PIPES?
23 A. THAT IS CORRECT; THEY DID.
24 Q. WOULD YOU -- THAT'S CORRECT?
25 A. YES.
26 Q. OKAY. WOULD YOU DESCRIBE WHAT THAT UNIQUE
27 APPROACH WAS.
28 A. WELL, METALCLAD, MR. KEMPER -- WHO OWNED THE
2939
1 COMPANY ORIGINALLY, WHICH WAS CALLED METALCLAD -- HE
2 DEVELOPED A WAY OF PUTTING IN THE TWO HALF-ROUNDS OF
3 INSULATION AND GLUING THEM INTO THE METAL.

4 AND THEN, WHEN YOU APPLIED THE INSULATION, IT
5 ALSO APPLIED THE JACKETING, WHICH IS ALUMINUM. AND IT WAS
6 LIKE A ONE-STEP PROCESS THEN.
7 SO IT SPED UP THE PROCESS OF INSULATING THE
8 LINES, AND YOU ALSO WERE WATERPROOFING AND FINISHING IT AT
9 THE SAME TIME.
10 IT WAS MR. KEMPER, WHO WAS THE ORIGINAL OWNER OF
11 METALCLAD.
12 Q. NOW, THIS WASN'T DONE ON ALL THE LINES THAT YOU
13 INSULATED?
14 A. NO.
15 Q. ALL RIGHT. LET ME TRY A CRUDE DRAWING OF WHAT
16 YOU JUST TOLD US.
17 BEFORE I DO THAT, LET ME ASK YOU: IS THIS AN
18 EXAMPLE OF A HALF-ROUND (INDICATING)?
19 A. YES.
20 Q. OKAY. AND THESE COME IN DIFFERENT SIZES?
21 A. YES, THEY DO.
22 Q. (PREPARING DRAWING)
23 OKAY. YOU WOULD HAVE LIKE A CIRCLE IN WHICH THE
24 METAL WOULD BE?
25 A. YES.
26 Q. THE HALF-ROUND WOULD GO IN THE CENTER?
27 A. GLUED INTO THE HALF. THERE WILL BE AN OPENING ON
28 THE METAL. YOU HAVE USUALLY ABOUT THIS THREE-INCH LAP
2940
1 METAL. SO I HAVE A LAP AND THAT PART OF THE CENTER WOULD BE
2 THE INSULATION WOULD BREAK. YOU COULD OPEN IT UP AND APPLY
3 IT.
4 Q. SO THE HALF-ROUND I JUST SHOWED YOU, IT WOULD
5 BE -- IT WOULD BE IN HERE (WRITING ON BOARD)? THERE WOULD
6 BE INSULATION AROUND IT, BETWEEN THE METAL AND THE
7 HALF-ROUND?
8 A. THEN YOUR LAP WOULD BE AT THE TOP PART, WHERE THE
9 OPENING IS.
10 SO YOU OPEN IT UP, PUT IT ON, CLOSE IT, HAVE YOUR
11 LAP, WHICH IS ALWAYS DOWN FROM WATERSHED.
12 Q. OKAY. SO INSTEAD OF THIS, IT WOULD BE THE PIPE
13 IN HERE (INDICATING)?
14 A. MM-HMM.
15 Q. AND IN HERE, YOU WOULD HAVE SOME KIND OF
16 INSULATION?
17 A. CORRECT.
18 Q. WHICH WOULD BE WHAT?
19 A. WELL, IT COULD BE THE HARD INSULATION OR
20 METALCLAD THAT THEY DEVELOPED, TO PUT LIKE MINERAL WOOL IN
21 THERE.
22 Q. MINERAL WOOL. OKAY.
23 NOW, WAS THERE A REASON THAT MINERAL WOOL
24 WOULDN'T WORK ON THE TOP -- LET'S SAY THIS IS THE TOP OF THE
25 PIPE (INDICATING).
26 WAS THERE A REASON WHY MINERAL WOOL WOULDN'T WORK
27 ON THE TOP OF THE INSULATION CYLINDER?
28 A. YES. WHAT THEY FOUND OUT WAS THAT YOUR MINERAL
2941
1 WOOL IS LIKE A FIBERGLASS. IT'S VERY SOFT AND METAL.
2 ANYTHING LOW, WHERE ANYBODY ACCESSES IT, IF THEY STEP ON IT
3 OR LEAN, IT WOULD CRUSH DOWN, AND IT WOULD THEREFORE BREAK
4 IT, YOU KNOW, DOWN, AND LOOSEN IT UP.
5 SO THEY STARTED PUTTING -- ON YOUR BIGGER PIPES,
6 THEY PUT TWO PIECES, TWO STRIPS OF HARD, WHICH WOULD BE THE
7 HARD INSULATION ON TOP. SO IF ANYBODY STEPPED ON IT OR
8 LEANED ON IT, IT WOULDN'T CRUSH.

9 Q. SO THAT'S WHAT YOU WERE DOING AT ORMOND BEACH?
10 A. RIGHT, ON THE FUEL OIL LINES.
11 Q. ON THE FUEL OIL LINES.
12 WHAT WOULD YOU USE HERE? WHEN YOU SAY "THE HARD
13 INSULATION," ARE YOU TALKING ABOUT BLOCK?
14 A. YES.
15 Q. BLOCK WITH ASBESTOS IN IT?
16 A. YES. AT THAT TIME, I'M SURE IT HAD IT IN THERE.
17 Q. NOW, DESCRIBE BLOCK TO US, BECAUSE WE DON'T HAVE
18 A PIECE OF IT HERE.
19 A. WELL, YOU HAD TWO DIFFERENT KINDS OF INSULATION.
20 YOU HAD YOUR HALF-ROUNDS, WHICH THEY CALL PIPE COVERING.
21 AND THEN YOU HAD BLOCK INSULATION, WHICH WOULD COME, IT
22 WOULD PROBABLY -- BLOCK INSULATION WOULD START OUT AT
23 12-BY-36. EVERYTHING WAS ALWAYS 36 INCHES LONG. THEY COULD
24 ORDER SIX-INCH BLOCK.
25 IF YOU WANTED TO PUT LAGS ON TOP OF A PIPE, OR
26 SAY EVEN AROUND A VESSEL, THEN YOU COULD ORDER THEM IN INCH
27 AND A HALF WIDE, YOU KNOW, ANYTHING, THE VARIOUS SIZES.
28 BUT IT WAS ALWAYS 36 INCHES LONG.
2942
1 Q. NOW, YOU SAID THESE WERE PUT ON THE 20-INCH
2 LINES?
3 A. THAT WAS FUEL OIL LINES, WHICH ARE
4 APPROXIMATELY -- THEY COULD VARY IN SIZE, BUT THEY WERE LIKE
5 LARGE LINES, BECAUSE THEY WERE CARRYING FUEL OIL FROM THE
6 TANKS TO THE UNIT.
7 Q. AND WHAT WAS THE DIMENSIONS OF THE BLOCK THAT
8 WOULD BE PUT UP ON THE TOP?
9 A. USUALLY, THERE WAS TWO BLOCKS, BE AN INCH AND A
10 HALF WIDE, BECAUSE THEY HAVE TO CONTOUR AROUND. THEY
11 COULDN'T LIKE HAVE SIX-INCH-WIDE BLOCK. IT WOULDN'T FIT.
12 USUALLY ABOUT INCH AND A HALF WIDE, TWO OF THEM
13 ON THE TOP. SO THAT YOU COULDN'T CRUSH THE INSULATION
14 DOWN. IT HAD TO BE FIRM.
15 Q. SO THERE WOULD BE LIKE TWO PIECES UP HERE. AS I
16 SAID, I'M NOT GOING TO GET ANY AWARDS FOR THE ARTISTRY
17 HERE.
18 TWO PIECES ABOUT INCH AND A HALF IN SIZE THAT
19 WOULD RUN THE LENGTH OF THE PIPE?
20 A. ON THE TOP, THE WHOLE LENGTH OF THE PIPE, YES.
21 Q. SO IF WE WERE LOOKING AT THE PIPE FROM THE TOP,
22 THESE WOULD RUN ALL THE WAY ALONG THE PIPE AS MANY FEET --
23 AS MANY AS -- WHATEVER DISTANCE THE PIPE WAS, IT WOULD RUN
24 ALONG THE PIPE TOP?
25 A. THAT'S CORRECT.
26 Q. DID THEY HAVE TO BE CUT?
27 A. USUALLY, THEY WOULD ORDER THE BLOCK. IF THEY
28 WANTED TWO-INCH LAG OR INCH AND A HALF LAG UP THERE -- A LOT
2943
1 OF TIMES WHEN THEY DO A VESSEL, THEY CUT ON AN ANGLE. SO
2 THAT WHEN YOU STACK THEM TOGETHER AROUND YOUR TANK OR YOUR
3 PIPE, THEY WOULD COME TOGETHER.
4 OTHERWISE, THEY WERE SQUARE. THERE WOULD ALWAYS
5 BE A GAP AT THE TOP. SO THEY'D TAKE AND MITER IT, AND THEY
6 WOULD COME TOGETHER. IT WOULD BE FLAT.
7 Q. SO IT WOULDN'T LOOK LIKE THIS (INDICATING)? IT
8 WOULD ACTUALLY BE FIRM, UP AGAINST THE METAL?
9 A. COME TOGETHER TO FIT ON THE PIPE. THEY CUT IN
10 THERE. IT WOULD SET TOGETHER AND IT WOULD BE TIGHT AND MORE
11 FORM-FIT AROUND YOUR PIPE.
12 Q. SO FROM THE TIME THAT YOU HAD THIS BLOCK IN
13 THERE, THEN YOU COULD CRAWL OVER IT OR YOU COULD WALK ON IT

14 AND IT WOULDN'T CRUSH?
15 A. THAT'S CORRECT. LIKE THE SAMPLE YOU SHOWED
16 THERE. IT'S A FIRM INSULATION.
17 Q. NOW, DID THEY ALSO PUT THAT ON SMALLER PIPE THAN
18 THE 20-INCH?
19 A. USUALLY, SMALL PIPES WOULD HAVE TO BE JUST A
20 SOLID PIECE OF PIPE, NOT WHAT YOU HAVE THERE.
21 Q. IN THE SMALLER PIPES, DID THEY ALWAYS PUT THE
22 MITERED BLOCK IN THE TOP?
23 A. WELL, THE SMALLER PIPES WOULD BE THE HALF-ROUND.
24 SO IT WAS ALREADY SHAPED, PREFORMED.
25 Q. LIKE THE ONES YOU SHOWED ME?
26 A. RIGHT.
27 Q. WAS THERE A LOT OF LINEAR FEET OF OIL LINES AT
28 ORMOND BEACH THAT YOU WERE PUTTING INSULATION ON?
2944
1 A. WELL, YES, THERE WAS. I COULD ONLY GUESS. MAYBE
2 SEVERAL THOUSAND FEET, BECAUSE THEY WOULD TIE INTO EACH
3 TANK, FUEL STORAGE TANK. YOU GO TO A PUMP STATION. FROM
4 THE PUMP STATION, YOU HAVE TO PUMP OIL. REAL THICK CRUDE
5 OIL WON'T MOVE UNLESS YOU HEAT IT UP.
6 AND YOU HAVE TO HEAT IT UP TO GET IT TO MOVE.
7 THEN YOU HAVE YOUR PUMPS.
8 MR. BROWN: OKAY. LET ME SHOW YOU SOME
9 PICTURES. I THINK THE "E" WITH A CHECK MARK MEANS IT'S IN
10 EVIDENCE?
11 THE CLERK: YES.
12 MR. BROWN: LET ME SHOW YOU WHAT'S IN EVIDENCE
13 AS 1852.
14 Q. FIRST OF ALL, LET ME SHOW YOU -- LOOK THROUGH
15 THERE.
16 DO YOU RECOGNIZE THAT AS THE ORMOND BEACH PLANT?
17 A. WHEN I WAS THERE, I DON'T RECALL. IT LOOKS LIKE
18 THAT.
19 Q. YOU ARE TALKING --
20 A. THE TREES AND STUFF.
21 Q. YOU ARE TALKING ABOUT THE GATE?
22 A. YES, THE GATE.
23 Q. MOVE PAST THAT TO THE PICTURE OF THE STRUCTURE.
24 A. THE CONSTRUCTION GATES WERE USUALLY NOT IN THE
25 MAIN ENTRANCE. THEY USUALLY TRIED TO GET YOU AS CLOSE TO
26 THE UNIT THEY COULD GET YOU. IT WOULD BE IN THE BACKSIDE
27 OFF --
28 Q. CAN YOU FIND SOME OF THE FUEL LINES IN ONE OF
2945
1 THOSE PICTURES, FUEL LINES THAT WOULD BE INSULATED THE WAY
2 YOU'VE TESTIFIED HERE?
3 A. THE FUEL LINES WOULD COME IN FROM THE BOTTOM.
4 AND YOU PROBABLY WOULDN'T -- THIS ONLY SHOWS THE UNIT
5 (INDICATING). IT SHOWS YOUR MAIN STEAM LINES COMING DOWN.
6 Q. ALL RIGHT. NOW, LET ME ASK YOU THIS: DID YOU
7 INSTALL ASBESTOS INSULATION ON SOME OF THE PIPE?
8 A. YES.
9 Q. AND ON SOME OTHER OF THE EQUIPMENT THAT WAS AT
10 THE PLANT?
11 A. I WORKED -- I ALSO WORKED ON TURBINES. IT'S
12 ALWAYS DONE WITH A HARD BLOCK AND MUD. THE APPLICATIONS,
13 YOU PUT THE MUD ON THE SHELL OF THE TURBINE, AND THEN YOU
14 TAKE USUALLY SIX-INCH BLOCK AND SCORE IT. SO WHEN YOU PUT
15 IT ON TOP, IT BREAKS AND FORMS, BECAUSE IT'S A ROUND,
16 HALF-ROUND SURFACE ON THE TURBINE.
17 Q. AND THE TURBINE --
18 A. YOU HAVE A BOTTOM SIDE AND YOU HAVE A TOP SIDE

19 AND THEY PUT IT TOGETHER.
20 Q. AND THE TURBINE IS DOWN ON THE DECK, ON THE
21 GROUND?
22 A. IT'S ON THE TURBINE LEVEL.
23 Q. TURBINE LEVEL?
24 A. RIGHT. IT'S CALLED A TURBINE LEVEL. THAT'S
25 WHERE THE TURBINE IS AND THE GENERATOR.
26 Q. DID YOU MIX THE MUD?
27 A. USUALLY, WE HAD A HELPER, WHAT THEY CALL A HELPER
28 OR AN APPRENTICE. AND THAT WAS THEIR JOB.
2946
1 BUT SOMETIMES YOU HAD TO MIX YOUR OWN. IT
2 DEPENDS.
3 Q. WHEN THE MUD WAS MIXED, DID IT COME FROM A DRY
4 MIX THAT WAS DUSTY?
5 A. IN A SACK. AND YOU OPEN IT, PUT IT IN YOUR MUD
6 BOX -- PEOPLE ALWAYS CALL THEM MUD BOXES -- YOU ADD YOUR
7 WATER. YOU HAD A HOLE AND YOU MIXED IT UP.
8 Q. WHEN THE APPRENTICE POURED THE BAG OF MUD INTO
9 WHATEVER YOU WERE GOING TO MIX IT IN, DID THAT CREATE A DUST
10 SITUATION?
11 A. OH, YES. BECAUSE IT IS DUSTY. SO THERE'S NO WAY
12 NOT TO KEEP IT FROM, YOU KNOW, DUST.
13 Q. THIS BLOCK YOU WERE PUTTING ON THE TURBINE AND
14 PERHAPS OTHER PLACES, DID THAT HAVE TO BE CUT TO FIT?
15 A. USUALLY, WHAT THEY WOULD ORDER OUT, THE SIZE WE
16 USE WOULD BE ABOUT A SIX-INCH BLOCK.
17 THEN WE'D HAVE TO -- BEING THE TURBINE SHELL
18 WOULD BE ROUND, WE'D HAVE TO SCORE IT, USUALLY LENGTHWISE,.
19 AND THEN MAYBE EVERY SIX INCHES, PUT A CUT IN IT
20 WITH A HAND SAW, DOWN ABOUT HALF THE THICKNESS OF THE BLOCK.
21 USUALLY, THE BLOCK WOULD EITHER BE TWO LAYERS,
22 TURBINE BEING RUN ABOUT 1,000 DEGREES OR SO. SO IT WOULD
23 HAVE AT LEAST TWO LAYERS OF BLOCK STAGGERED.
24 IT COULD EITHER BE ONE-HALF OF TWO-INCH BLOCK,
25 AND THEN THE NEXT LAYER, TWO AND HALF, OR SOMETIMES THEY
26 JUST USE LAYERS, LAYERS OF TWO AND A HALF. YOU ALWAYS HAVE
27 TO HAVE THE MUD TO STICK IT ON FIRST.
28 THE COURT: THAT'S WHAT YOU SAID?
2947
1 THE WITNESS: YES. YOU STICK THE BLOCK ON THERE
2 WITH MUD. FIRST, YOU HAD TO USE STAINLESS STEEL WIRE,
3 BECAUSE THE TEMPERATURE OF THE TURBINE IS 1,000 DEGREES.
4 YOU HAD TO USE STAINLESS WIRE, SO IT WOULDN'T
5 BURN OFF.
6 Q. IS THERE A PICTURE OF THE TURBINE IN THAT
7 EXHIBIT?
8 A. THIS RIGHT HERE (INDICATING). USUALLY THEY
9 HAD --
10 Q. HOLD THAT UP SO I CAN SEE IT. PERHAPS THE JURY
11 TOO.
12 A. THIS IS THE TURBINE LEVEL RIGHT HERE. THE
13 TURBINE AND GENERATOR.
14 THEY WOULD ALSO COVER THEM WITH A CASING OVER IT
15 THAT WOULD BE RIGHT HERE (INDICATING).
16 Q. SO INSULATION IS INSIDE THAT CASING?
17 A. YES, THE GENERATOR AND THE TURBINE.
18 AND THEN I THINK THESE ARE CALLED DA TANKS.
19 USUALLY MAIN STEAM COME DOWN OFF THE TOP OF THE BOILER, COME
20 DOWN HERE AND FEED THE TURBINE.
21 AND THAT'S ONE REASON WHY THEY WOULD HAVE
22 BLOWDOWNS TO CLEAN OUT THE LINES (INDICATING).
23 Q. HOLD IT UP A LITTLE HIGHER.

24 YOU WERE POINTING TO THAT CYLINDER DOWN AT THE
25 BOTTOM RIGHT AS A TURBINE?
26 A. THAT IS WHERE THE TURBINE WOULD FIT ON THE
27 TURBINE LEVEL. THE STEAM WOULD COME DOWN OFF THE TOP OF THE
28 POWERHOUSE DOWN HERE, AND THEN FEEDS TO THE TURBINE.

2948
1 AND THEN THE STEAM IS WHAT TURNS THE TURBINE TO
2 GENERATE THE ELECTRICITY IN THE GENERATOR.
3 Q. NOW, THE INSULATOR CREW, THE METALCLAD CREW YOU
4 WERE WORKING WITH, WERE THEY WORKING ALL THROUGH THIS
5 STRUCTURE?
6 A. USUALLY, AT THAT TIME, THEY'RE EVERYWHERE. ALL
7 THESE LINES HERE THAT YOU SEE THAT ARE SILVER ARE ALL
8 INSULATED LINES.
9 MR. ROSSE: OBJECTION. HEARSAY, YOUR HONOR.
10 THE COURT: JUST A SECOND.
11 MR. ROSSE: OBJECTION. HEARSAY. MOVE TO
12 STRIKE.
13 THE WITNESS: WHAT?
14 THE COURT: HOLD ON. I HAVE TO TAKE CARE OF
15 THIS PROBLEM. THIS ISN'T YOUR PROBLEM. IT'S MINE.
16 WHEN YOU SAID THAT THOSE THINGS WERE INSULATED,
17 DO YOU KNOW THAT FROM PERSONAL OBSERVATION? ARE YOU RELYING
18 ON SOMETHING ELSE IN GIVING THAT TESTIMONY?
19 THE WITNESS: I WORKED ON MANY MAIN
20 POWERHOUSES. ANYTHING THAT'S GOING UP, THESE ARE YOUR MAIN
21 STEAM LINES. THEY HAVE TO BE INSULATED.
22 THE COURT: ALL RIGHT. I'LL ALLOW THE ANSWER.
23 MR. ROSSE: THE QUESTION -- THE ANSWER WAS ONE
24 STEP FORWARD. HE'S DESCRIBING --
25 THE COURT: WHAT DID HE SAY? WHAT DID HE SAY
26 THAT YOU'RE MOVING TO STRIKE?
27 MR. ROSSE: HIS CREW.
28 THE COURT: HIS CREW WHAT?

2949
1 MR. ROSSE: WORKED ALL THROUGH THE PLANT.
2 THE COURT: WHEN YOU SAY "YOUR CREW WORKED ALL
3 THROUGH THE PLANT," ARE YOU BASING THAT -- DID YOU SAY
4 THAT?
5 THE WITNESS: I DON'T KNOW. NOT MY CREW. I
6 PROBABLY SAID "THE CREW."
7 THE WITNESS: YOU HAVE A LOT TO ACCRUE AS YOUR
8 WHOLE, YOU KNOW, ALL THE PEOPLE THAT ARE WORKING THERE. NOT
9 MY CREW. I DIDN'T RUN THAT JOB.
10 MR. ROSSE: COULD WE HAVE A SIDEBAR, YOUR
11 HONOR?
12 THE COURT: ALL RIGHT.
13 (COURT AND COUNSEL CONFER OUTSIDE
14 THE PRESENCE OF THE JURY)
15 THE COURT: OKAY. JURORS, WHAT I'M GOING TO DO,
16 BECAUSE THERE SEEMS TO BE SOME POTENTIAL CONFUSION ABOUT
17 WHAT THE WITNESS MEANT BY HIS LAST ANSWER ABOUT WHERE "THE
18 CREW" WAS WORKING, I'M GOING TO STRIKE THAT TESTIMONY,
19 WITHOUT PREJUDICE TO THE LAWYERS ASKING ABOUT WHO WAS
20 WORKING WHERE AND WHAT HE KNEW.
21 BUT BECAUSE OF THE CONFUSION, I'M GOING TO JUST
22 STRIKE THAT ANSWER AND LET YOU START ALL OVER.
23 OKAY?
24 MR. BROWN: SURE.
25 Q. MR. -- IS IT MR. MONDT?
26 A. MONDT (PRONOUNCING).
27 Q. MONDT. OKAY.
28 DID YOU OBSERVE THE METALCLAD INSULATORS WORKING

2950

1 THROUGHOUT THAT STRUCTURE?

2 A. YES. THEY WERE EVERYWHERE.

3 Q. THEY WERE EVERYWHERE.

4 OKAY. I'D LIKE TO GET FROM YOU A LIST OF THE
5 EQUIPMENT OR PIPING YOU INSULATED WITH ASBESTOS INSULATION.
6 OKAY.

7 THE COURT: CAN I JUST ASK YOU A QUESTION ON
8 THAT LAST QUESTION? I STRUCK THE PRIOR ANSWER.

9 SO WHEN YOU SAY "THROUGHOUT THIS STRUCTURE,"
10 THERE IS NO REFERENCE IN THIS RECORD?

11 MR. BROWN: THANK YOU, YOUR HONOR.

12 "THAT STRUCTURE" MEANS THE STRUCTURE WHICH IS
13 SHOWN ON 1852-C, THIS ONE RIGHT HERE (INDICATING). OKAY.

14 THE COURT: IS THERE A QUESTION?

15 MR. BROWN: I SAID: IS THAT THE STRUCTURE, AND
16 HE SAID YES.

17 THE COURT: I DIDN'T HEAR IT.

18 DID YOU ANSWER THAT YES?

19 THE WITNESS: YES, I DID.

20 THE COURT: THANK YOU.

21 THE WITNESS: I KNOW ALL THESE LINES ARE
22 INSULATED.

23 MR. BROWN: Q. LET ME GO TO THE TYPES OF
24 PIPING OR INSULATION OR EQUIPMENT THAT YOU OBSERVED HAVING
25 ASBESTOS INSULATION PLACED ON IT.

26 I THINK YOU ALREADY TOLD ME THE TURBINE?

27 A. TURBINE, YES.

28 Q. TURBINE. B-I-N-E. OKAY.

2951

1 HOW ABOUT TWO AND A HALF INCH PIPE AND LOWER?

2 A. MOST ALL THE SMALL PIPE ALWAYS HAVE TO BE JUST
3 THE HALF-ROUND HARD INSULATION.

4 Q. MOST SMALL PIPE.

5 HOW MUCH SMALL PIPE WAS THERE IN THAT STRUCTURE
6 AND AROUND IT THAT YOU WORKED ON?

7 A. I COULDN'T TELL YOU. FOOTAGEWISE?

8 Q. THOUSANDS OF FEET?

9 A. OH, YES. I'D SAY, HAVE TO BE IN VARIOUS AREAS,
10 YES.

11 Q. IN THE 20-INCH OIL LINES AS YOU DESCRIBED, THAT
12 IS THE BLOCK ON THE TOP?

13 A. YES.

14 Q. AND IN SMALLER LINES, WHERE IT WAS NECESSARY TO
15 PROTECT THE TOP FROM WALKING OR CRAWLING ACROSS?

16 A. USUALLY, IT WOULD BE A SIX-INCH LINE ABOVE WOULD
17 HAVE MAYBE A STRIP IN THERE.

18 ONLY IF IT'S ACCESSIBLE TO PEOPLE WALKING, LIKE A
19 FLOOR LEVEL.

20 Q. SURE.

21 A. ANYTHING UP REALLY HIGH THAT NO ONE GET ON THERE,
22 THEY COULD PUT THE EIGHT-INCH PIPE WITH THE GLASS IN IT.

23 Q. AND WHEN YOU SAY "REALLY HIGH," YOU'RE TALKING
24 PER FLOOR?

25 IN OTHER WORDS, IF, PER FLOOR, THE PIPE WAS HIGH
26 ENOUGH SO YOU WOULDN'T BE EXPECTED TO CRAWL ON IT OR WALK ON
27 IT, THEN THEY WOULDN'T DO THIS BLOCK INSULATION ON THE TOP
28 OF THE METALCLAD STUFF?

2952

1 A. CORRECT.

2 Q. BUT IF LOW ENOUGH, YOU MIGHT WALK OR CROSS OVER
3 IT SOMEHOW, THEN YOU'D PUT THAT BLOCK ON THE TOP?

4 A. IT WAS FOR PROTECTION ONLY, FOR PROTECTION OF THE

5 PIPES.
6 Q. IN TERMS OF THE TYPE OF PIPE THAT WAS ON A LOWER
7 LEVEL ON EACH FLOOR, DID THAT ALSO AMOUNT TO THOUSANDS OF
8 FEET OF PIPING?
9 A. I'M NOT EXACTLY SURE HOW MANY -- HOW MUCH FOOTAGE
10 ON A POWERHOUSE. THE AMOUNT, IT WOULD BE A LOT OF IT.
11 Q. A LOT OF IT. THAT'S GOOD ENOUGH.
12 WAS THERE ANYPLACE ELSE YOU USED BLOCK BESIDES
13 THE TURBINE?
14 A. I THINK ALL THESE HERE DA TANKS AND THINGS
15 (INDICATING).
16 Q. WHAT DID YOU SAY, "TA" TANKS?
17 A. THESE HERE (INDICATING).
18 Q. WHAT ARE THEY CALLED?
19 A. HEAT EXCHANGERS. THEY ARE ON THE TURBINE LEVEL.
20 AS I RECALL, THEY HAD IT ONLY ON THE TOP PART. THEY PUT THE
21 HARD BLOCK.
22 EVERYTHING ELSE HAD THE MINERAL WOOL BLANKETING
23 AROUND THE BOTTOM PART.
24 Q. A COUPLE OF THEM GOT AWAY.
25 HEAT EXCHANGERS AND SOMETHING ABOUT DA OR VA
26 TANKS?
27 A. THESE TANKS ARE HERE. THE DA TANKS,
28 DEAIRATORS. THE ACTUAL FUNCTION, THE WORKING MECHANICS OF
2953 IT, I COULDN'T TELL YOU, THE FACT OF THE WAY IT WORKS.
3 THESE WERE ALWAYS CALLED "DA," TO MY KNOWLEDGE.
4 Q. LET ME JUST SORT OF CUT TO THE CHASE HERE. HOW
5 WOULD YOU DESCRIBE THE QUANTITY OF ASBESTOS INSULATION THAT
6 THE METALCLAD CREW WAS INSTALLING THERE THAT YOU OBSERVED?
7 WAS IT A LITTLE BIT, OR A LOT OR WHAT?
8 MR. ROSSE: OBJECTION, YOUR HONOR. VAGUE.
9 THE COURT: SUSTAINED.
10 MR. BROWN: Q. GIVE US YOUR BEST DESCRIPTION
11 OF HOW MANY -- WHAT KIND OF QUANTITY OF INSULATION WAS GOING
12 IN THERE ON THESE ITEMS AND ON ANY OTHER THINGS THAT
13 REQUIRED INSULATION?
14 MR. ROSSE: YOUR HONOR, STILL VAGUE. AND LACKS
15 FOUNDATION.
16 THE COURT: YES, IT IS. IT'S VAGUE.
17 THE QUANTITY THAT WAS GOING ON WHEN? WHERE?
18 MR. BROWN: AS HE OBSERVED IN THIS STRUCTURE.
19 THE COURT: IN WHAT PERIOD OF TIME?
20 THE QUESTION IS VAGUE. I'LL SUSTAIN.
21 MR. BROWN: ALL RIGHT.
22 Q. LET ME ASK YOU THIS: WHAT KIND OF CLOTHING DID
23 YOU WEAR WHEN YOU WERE WORKING THERE?
24 A. I WORE --
25 MR. ROSSE: OBJECTION. RELEVANCE.
26 MR. BROWN: I WILL TIE IT UP.
27 THE WITNESS: TO DO WHAT?
28 MR. BROWN: I'M TALKING TO --
29 THE COURT: THE JUDGE.
2954
1 THE WITNESS: I DON'T --
2 THE COURT: HOLD ON.
3 THE WITNESS: I'VE BEEN AROUND CONSTRUCTION SO
4 LONG, I DON'T REALLY HEAR A LOT. SPEAK UP JUST A LITTLE
5 BIT.
6 MR. BROWN: I'M SORRY. I WILL TRY TO TALK LOUD.
7 THE COURT: LET ME JUST EXPLAIN THE WAY THIS
8 WORKS.
9 IF ONE OF THE LAWYERS MAKES AN OBJECTION, THEN

10 ASSUMING YOU CAN HEAR IT, YOU HAVE TO STOP ANSWERING,
11 BECAUSE I'M SUPPOSED TO RULE ON IT.
12 THE WITNESS: I SEE.
13 THE COURT: SO YOU'VE GOT TO GIVE ME A CHANCE TO
14 DO MY JOB.
15 OKAY. NOW, WHERE WERE WE?
16 MR. BROWN: I ASKED HIM WHAT KIND OF CLOTHING HE
17 WORE.
18 THE COURT: BUT YOU SAID YOU ARE GOING TO TIE IT
19 UP.
20 ON THAT REPRESENTATION, I WILL ALLOW THE
21 QUESTION.
22 MR. BROWN: Q. WHAT DID YOU WEAR WORKING ON
23 THAT PLANT?
24 A. I ALWAYS -- I THINK A LOT OF INSULATORS HAVE
25 THEIR OWN WHAT THEY LIKE TO WEAR, BUT I ALWAYS WORE HALF
26 PANTS. I ALWAYS WORE PANTS AND --
27 (REPORTER INTERRUPTION)
28 THE COURT: WHEN SHE INTERRUPTS YOU, SHE'S
2955

1 ASKING YOU TO REPEAT WHAT YOU JUST SAID, BECAUSE SHE HAS TO
2 GET DOWN EVERYTHING THAT IS BEING SAID.
3 AND WHAT SHE'S TELLING YOU, YOU ARE GOING SO FAST
4 THAT SHE CAN'T GET IT. BUT WHAT YOU NEED TO DO WHEN THAT
5 HAPPENS IS GO BACK AND REPEAT THE LAST FEW WORDS. SHE IS
6 TRYING TO CATCH UP WITH YOU.
7 SO WE DON'T WANT TO GO ON TO SOMETHING ELSE. WE
8 WANTS YOU TO GO BACK AND TELL HER WHAT SHE MISSED. OKAY.
9 MR. BROWN: Q. YOU WERE DESCRIBING --
10 A. I WORE PLASTERER'S PANTS, WHITE. THEY JUST COVER
11 YOUR REGULAR PANTS. AND THEN I WORE A SWEAT SHIRT, USUALLY
12 A SWEAT SHIRT OR LONG-SLEEVE SHIRT, ALWAYS SOMETHING LIKE
13 THAT.
14 Q. WHAT COLOR WERE THOSE OVERPANTS, THE PANTS, ON
15 THE OUTSIDE?
16 A. USUALLY, ALWAYS WHITE.
17 Q. WHY DID YOU PICK WHITE RATHER THAN A DARKER COLOR
18 AT THAT ORMOND PLANT?
19 A. WELL, BECAUSE OF YOUR HARD BLOCK AND PIPE
20 COVERING IS WHITE. AND IF YOU HAD A BLUE JEAN OR SOMETHING
21 LIKE THAT, IT WOULD JUST -- I MEAN, IT WOULD BE WHITE.
22 ANYWAY, JUST SOMETHING THAT THE INSULATOR ALWAYS WORE WHITE.
23 Q. FOR THE REASON YOU JUST GAVE?
24 A. RIGHT. IT WOULDN'T LOOK NEAR AS DIRTY RIGHT OFF
25 THE BAT.
26 Q. NOW, WERE OTHER TRADES WORKING IN AND AROUND YOU
27 AND AROUND THE METALCLAD CREWS THAT YOU OBSERVED?
28 A. THERE WAS LIKE EVERY CRAFT WAS THERE. WHEN BEING
2956

1 BUILT, YOU HAVE THE ELECTRICIANS, PIPEFITTERS, WELDERS,
2 BOILERMAKERS, AS FAR AS LABORERS. EVERYBODY IS THERE AT THE
3 SAME TIME.
4 Q. AND HOW CLOSE IN PROXIMITY TO YOU AND THE WORK
5 THAT YOU WERE DOING WERE THE PIPEFITTERS?
6 A. WELL, USUALLY THEY'RE EVERYWHERE. IF YOU'RE HIGH
7 UP ON A STRUCTURE, THERE MAY ONLY BE A FEW THERE, BECAUSE
8 MOST OF THIS UP HIGHER IS INSTALLED ALREADY.
9 OUR INSULATION IS PUT ON AFTER THEY COMPLETED AND
10 TESTED THE LINES. THEY COULD BE COMING BACK DOING SMALL
11 PIPING COMING OUT OF THE TOP, THE VENTS.
12 BUT AS FAR AS LIKE OUT IN THE FUEL OIL LINES,
13 THERE WOULD BE VERY FEW UP IN THE STRUCTURE. THEY WOULD BE
14 PROBABLY EVERYWHERE.

15 Q. OKAY. DID YOU EVER HAVE ANY FRICTION WITH THE
16 PIPEFITTERS ABOUT THE INSULATION DUST OR THE PIECES OF
17 INSULATION?
18 A. YES. I HAVE HAD YOU MIGHT CALL IT A RUN-IN WITH
19 THEM.
20 Q. DESCRIBE HOW THAT WOULD HAPPEN.
21 A. WELL, WE ALWAYS TRY TO MINIMIZE OUR DUST. BUT IN
22 A POWERHOUSE, YOU HAVE WHAT YOU CALL GRATINGS. SO WHEN
23 YOU'RE CUTTING A BLOCK OR A PIECE OF PIPE COVERING, THE DUST
24 FALLS DOWN, AND THEY'RE ALWAYS YELLING AT YOU. "KEEP THE
25 DUST, YOU KNOW, DOWN. IF YOU DROP ONE MORE PIECE ON ME, I'M
26 GOING TO COME UP THERE," AND STUFF LIKE THAT.
27 Q. DESCRIBE THE SAW, THE TEETH ON THE SAW YOU USED
28 TO CUT THE INSULATION.

2957

1 A. WELL, THEY'RE CALLED PRUNING SAWS. AND THEY HAVE
2 LARGE TEETH FOR CUTTING MAINLY WOOD IS WHAT A PRUNING SAW IS
3 FOR. IT'S EASY TO CUT THE INSULATION.

4 IF YOU USE A FINE-TOOTHED SAW, THEN IT CLOGS UP
5 AND IT WILL NOT CUT. SO YOU HAD TO HAVE SOMETHING THAT
6 WOULD TEAR THROUGH THE INSULATION AND DISPERSE IT.

7 Q. WOULD THOSE BIG TEETH CAUSE A LOT OF DUST WHEN
8 YOU CUT?

9 A. YES, THEY WOULD.

10 Q. WOULD THE DUST BEING CREATED GET ON THE INNER
11 CLOTHES, THE CLOTHES YOU HAD UNDERNEATH THESE PLASTERER'S
12 PANTS?

13 A. WE TRIED NOT TO LET IT GET THERE. THAT'S WHY WE
14 HAD COVERALLS ON. THE SHIRT, THE LONG-SLEEVE SHIRTS,
15 SOMETIMES THEY GO DOWN IN THAT. IT'S PRETTY HARD TO KEEP IT
16 OFF OF YOU.

17 Q. WOULD IT END UP IN YOUR POCKETS?

18 A. OH, YES. IN FACT, WHEN I HAD -- USUALLY, I WOULD
19 ALWAYS TAKE MY WORK CLOTHES HOME ON A FRIDAY, AND I'D HAVE
20 TO TURN THEM UPSIDE DOWN. YOUR FRONT POCKET, YOU CAN PULL
21 THEM INSIDE OUT, GET THE CHIPS OUT AND STUFF.

22 BUT THE BACK POCKETS, YOU HAD TO HOLD YOUR
23 COVERALLS UP, RUN YOUR HAND IN THERE THROUGH THE CHIPS AND
24 SHAVINGS AND STUFF, PULL IT OUT OF THAT.

25 Q. WHAT WAS THE SIZE OF THAT DUST THAT WAS CREATED
26 BY YOUR INSULATION WORK?

27 A. PROBABLY ALL SIZES. BIGGER CHIPS, THE ONES THAT
28 GET IN YOUR POCKETS.

2958

1 THE DUST IS, OF COURSE, EVERYWHERE, THE FINE
2 DUST. THAT'S WHY YOU SHOOK YOUR COVERALLS BEFORE YOU TOOK
3 THEM HOME.

4 Q. BY "FINE DUST," DO YOU MEAN DUST THAT LOOKS LIKE
5 THAT WHICH IS CONTAINED IN EXHIBIT 1854, THIS HERE
6 (INDICATING)?

7 A. THERE WOULD BE DUST LIKE THIS. YOU'D HAVE BIGGER
8 CHIPS. YOU'D HAVE SMALLER. IT WOULD PROBABLY GO DOWN TO
9 LIKE -- EXACTLY LIKE THIS, AND THEN EVEN FINER.

10 SOME, YOU MIGHT NOT EVEN BE ABLE TO SEE, BECAUSE
11 IT'S SO FINE. JUST POWDER. THEY CAN GO AS FINE AS TALCUM
12 POWDER. AND BIG CHIPS THAT -- YOU KNOW, IT DEPENDS ON YOUR
13 SAW.

14 Q. SO YOU OBSERVED VISIBLY DUST THROUGHOUT THE
15 STRUCTURE WHEN YOU WERE THERE?

16 A. IF YOU HAD AN INSULATOR WORKING IN THE STRUCTURE,
17 THERE WAS DUST.

18 MR. BROWN: OKAY. LET ME SEE IF THAT'S WHERE I
19 CAN QUIT.

20 OKAY. AT THIS TIME, I'M OUT OF HERE.
21 THE COURT: JURORS, LET'S ALL DO THE SAME
22 THING. LET'S TAKE A RECESS. LET'S TAKE A RECESS TILL FIVE
23 MINUTES AFTER 11:00.
24 PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL
25 SEE YOU BACK AT FIVE AFTER 11:00.
26 (RECESS TAKEN FROM 10:40 TO 11:00 A.M.)
27 THE COURT: OKAY. WE ARE BACK ON THE RECORD.
28 AND I GATHER YOU'RE NEXT, MR. ROSSE.
2959
1 MR. ROSSE: I GUESS SO, YOUR HONOR.
2 CROSS-EXAMINATION
3 BY MR. ROSSE: Q. GOOD MORNING, MR. MONDT.
4 A. GOOD MORNING.
5 Q. IF YOU CAN'T HEAR ME AT ANY POINT, WILL YOU LET
6 ME KNOW?
7 A. YES, I WILL.
8 Q. THANK YOU.
9 IF YOU HAVE ANY -- IF YOU DO NOT UNDERSTAND MY
10 QUESTIONS, YOU'LL ALSO LET ME KNOW THAT?
11 A. I WILL.
12 Q. NOW, YOU'VE BEEN AN INSULATOR FOR A NUMBER OF
13 YEARS?
14 A. THIRTY-FIVE AND A HALF YEARS.
15 Q. AND YOU WORKED ON A LOT OF DIFFERENT POWER PLANTS
16 DURING YOUR CAREER?
17 A. YES, I HAVE.
18 Q. MOST OF YOUR CAREER, OR AT LEAST THE EARLY PART
19 OF YOUR CAREER WAS SPENT WORKING FOR A COMPANY OTHER THAN
20 METALCLAD?
21 A. MY FIRST 13 AND A HALF YEARS, I WORKED FOR
22 OWENS-CORNING FIBERGLASS.
23 Q. YOU WORKED FOR A NUMBER OF DIFFERENT POWER PLANTS
24 FOR OWENS-CORNING FIBERGLASS?
25 A. YES.
26 Q. DO THESE PLANTS START TO GET -- THE JOBS START
27 GETTING CONFUSED IN YOUR MIND AT ALL?
28 A. THE TIMES, THE DATES THAT I WORKED ON THEM WAS
2960
1 MOST CONFUSING OF ALL.
2 Q. NOW, YOU WERE WORKING POWER PLANTS IN THE LATE
3 1950S, EARLY 1960S?
4 A. I STARTED IN THE TRADE THE SECOND DAY OF JANUARY,
5 1956, WITH THE LOS ALAMITOS STEAM -- IT WAS THE CALIFORNIA
6 EDISON STEAM PLANT. VERY FIRST JOB.
7 Q. AND DURING THAT TIME PERIOD, YOU OBSERVED A
8 CHANGE IN THE WAY THEY INSULATED BOILERS; IS THAT CORRECT?
9 A. YES.
10 Q. THEY WENT AWAY FROM THE HARD BLOCK INSULATION ON
11 BOILERS AND STARTED USING A SOFTER INSULATION?
12 A. LIKE A MINERAL WOOL. YES, IT WAS LIKE SLAG, A
13 METAL SLAG. IT WAS A FIBERGLASS.
14 NOT FIBERGLASS. IT WON'T RETAIN THE HEAT. YES
15 A, GLASS-TYPE INSULATION.
16 Q. AND THAT DIDN'T CONTAIN ASBESTOS; CORRECT?
17 A. I'M NOT SURE IF IT DID OR NOT.
18 Q. THEY STARTED THIS PROCESS, OR THEY DISCONTINUED
19 THE USE OF THE HARD BLOCK IN THE LATE '50S EARLY '60S?
20 A. EITHER THEY STARTED WORKING WITH LIKE A DETRICK
21 BLOCK IN PROBABLY MAYBE THE MID-60'S. THAT I THINK IS THE
22 FIRST TIME I STARTED SEEING SOMETHING OTHER THAN A HARD
23 BLOCK, CALCIUM SILICATE BLOCK, HARD BLOCK.
24 Q. YOU WERE DEPOSED RECENTLY; IS THAT CORRECT?

25 A. WHAT'S THAT?
26 Q. YOU WERE DEPOSED IN -- YOU WERE IN AN INFORMAL
27 SETTING, NOT IN A COURTROOM, BUT YOU WERE IN A TYPE OF
28 OFFICE, SMALL ROOM; PEOPLE ASKED YOU QUESTIONS; IT WAS TAKEN
2961
1 DOWN --
2 A. YES.
3 Q. -- BY THE REPORTER?
4 A. YES.
5 Q. YOU UNDERSTOOD AT THAT TIME THAT YOUR TESTIMONY
6 WAS GOING TO BE PUT INTO A TRANSCRIPT FORM?
7 A. THAT'S CORRECT.
8 Q. AND YOU WERE GIVEN THE OPPORTUNITY TO REVIEW THAT
9 TRANSCRIPT TO MAKE SURE THAT IT WAS ACCURATE?
10 A. THEY OFFERED ME ONE, BUT I DIDN'T TAKE ONE.
11 Q. YOU WERE OFFERED THE CHANCE TO REVIEW IT?
12 A. THAT'S CORRECT.
13 MR. BROWN: YOUR HONOR, COULD WE HAVE A SIDEBAR
14 FOR A SECOND ON THIS DEPOSITION?
15 THE COURT: OKAY.
16 (COURT AND COUNSEL CONFER OUTSIDE
17 THE PRESENCE OF THE JURY)
18 MR. ROSSE: Q. I'M GOING TO SHOW YOU A
19 CONDENSED VERSION OF VOLUME 3 OF YOUR DEPOSITION.
20 NOW, THAT DEPOSITION TOOK PLACE OVER SEVERAL
21 DAYS; CORRECT?
22 A. YES, IT DID.
23 Q. I'D LIKE TO REFER YOU TO PAGE 638, LINES 12
24 THROUGH 16.
25 ACTUALLY, I TAKE THAT BACK. PAGE 647.
26 MR. BROWN: LINES?
27 MR. ROSSE: LINES 4 THROUGH 13.
28 THE WITNESS: I DON'T THINK I HAVE A 647. I
2962
1 DON'T SEE A PAGE 647 ON THIS.
2 MR. ROSSE: Q. LOOK AT THE VERY BOTTOM IN THE
3 LOWER RIGHT-HAND CORNER.
4 DOES IT SAY "PAGE 647?"
5 A. 643, 644.
6 Q. LET ME JUST GIVE YOU THIS COPY.
7 A. 644.
8 Q. ACTUALLY, IF YOU LOOK AT THE TOP OF THAT COLUMN,
9 BEFORE THE LINE, IT SAYS "PAGE 647."
10 DO YOU SEE THAT?
11 A. OH, OKAY. MM-HMM.
12 Q. THEN YOU CAN LOOK DOWN, BEGINNING ON LINE 4.
13 DO YOU SEE THAT, SIR?
14 A. (EXAMINING)
15 YES, I DO.
16 Q. THE QUESTION READS: "MY QUESTION TO YOU IS,
17 IF YOU DIDN'T DO THE WORK PERSONALLY AND YOU
18 DIDN'T SEE THE WORK BEING DONE, HOW DO YOU" --
19 MR. BROWN: YOUR HONOR, I HAVE AN OBJECTION TO
20 THIS. THIS IS TIED TO BOILERS. I DIDN'T ASK ABOUT BOILERS.
21 I MEAN, THERE'S OTHER PROBLEMS HERE WE CAN
22 DISCUSS. NOT RELEVANT. BEYOND THE SCOPE OF DIRECT.
23 THE COURT: WHY DON'T YOU DO THIS. IF YOU WANT
24 TO ASK HIM SOME QUESTIONS ABOUT THE SUBJECT MATTER OF THIS
25 PASSAGE, WHY DON'T YOU ASK HIM DIRECTLY.
26 THEN IF YOU WANT TO READ, WE CAN GET TO THAT AT
27 THAT POINT.
28 MR. ROSSE: Q. HAVE YOU HAD THE OPPORTUNITY TO
2963

1 REVIEW LINES 4 THROUGH 13?
2 A. I DON'T UNDERSTAND IT.
3 MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO
4 THIS PROCEDURE. HE'S NOT REFRESHING HIS MEMORY. HE'S NOT
5 IMPEACHING. I DON'T KNOW WHAT HE'S DOING.
6 THE COURT: WHY DON'T YOU -- MR. ROSSE, LET ME
7 SUGGEST A WAY OF PROCEEDING. I JUST WANT TO EXPEDITE THIS.
8 WHY DON'T YOU JUST ASK HIM SUBSTANTIVE QUESTIONS
9 THAT ARE COVERED BY THIS PASSAGE, IF YOU WANT, RIGHT NOW.
10 THEN IF YOU FEEL THE ANSWERS AREN'T THE SAME AS
11 IN THE DEPOSITION, THEN WHY DON'T YOU READ THE DEPOSITION AT
12 THAT POINT.
13 I'M JUST TRYING TO EXPEDITE THIS. THAT'S A
14 SUGGESTION.
15 MR. ROSSE: Q. SIR, DOES THIS REFRESH YOUR
16 RECOLLECTION THAT HARD BLOCK ON BOILERS WAS DISCONTINUED
17 BETWEEN 1958 AND 1960?
18 MR. BROWN: OBJECTION. RELEVANCE AND 352.
19 THE COURT: OVERRULED.
20 YOU CAN ANSWER.
21 THE WITNESS: REPEAT THAT QUESTION.
22 DISCONTINUED TO 1960?
23 MR. ROSSE: Q. NO. NO.
24 DOES THIS REFRESH YOUR RECOLLECTION THAT YOU
25 TESTIFIED THAT THE USE OF HARD BLOCK IN INSULATION OF
26 BOILERS WAS DISCONTINUED IN 1958 OR 1960, IN THAT TIME
27 PERIOD?
28 MR. BROWN: YOUR HONOR, A LATE INTERRUPTION
2964
1 AGAIN, BUT WOULD YOU LOOK AT LINE 22 ON PAGE 644, 22 THROUGH
2 24.
3 THE COURT: YOU WANT ME TO LOOK AT LINE --
4 MR. BROWN: 22 THROUGH 24 ON PAGE 644, WHICH IS
5 WHY THIS IS IRRELEVANT.
6 THE COURT: LET ME LOOK AT THAT.
7 MR. BROWN: YOU COULD READ IT ALL THE WAY DOWN
8 TO 646.
9 THE COURT: YOUR OBJECTION IS LACK OF
10 FOUNDATION?
11 MR. BROWN: LACK OF FOUNDATION.
12 THE COURT: I THINK YOU ARE GOING TO HAVE TO
13 PROCEED THIS WAY, MR. ROSSE. YOU ARE GOING TO HAVE TO ASK
14 HIM THE QUESTIONS HERE NOW ON THIS SUBJECT.
15 THEN, WE'LL SEE WHERE IT GOES. ASK HIM, IF YOU
16 DON'T MIND, WITHOUT REFERENCE TO THE DEPOSITION, OR YOU CAN
17 JUST LEAVE THE SUBJECT.
18 BUT IN LIGHT OF THAT OBJECTION, I'M GOING TO HAVE
19 TO SUSTAIN IT AT THIS POINT. IT'S WITHOUT PREJUDICE TO YOUR
20 GOING INTO THIS AREA INITIALLY, WITHOUT REFERENCE TO THE
21 DEPOSITION, AND THEN YOU MAY OR MAY NOT GET TO THE
22 DEPOSITION.
23 MR. ROSSE: YOUR HONOR, I DON'T KNOW IF YOU WANT
24 ME TO ARGUE THIS IN FRONT OF THE JURY.
25 THERE IS A PURPOSE FOR DOING THIS.
26 THE COURT: COME ON UP AND EXPLAIN IT TO ME.
27 COME ON UP HERE. LET'S JUST DO IT RIGHT HERE.
28 I WANT TO GET BACK TO THE TESTIMONY.
2965
1 (COURT AND COUNSEL CONFER OUTSIDE
2 THE PRESENCE OF THE JURY)
3 THE COURT: AFTER A SIDEBAR, I UNDERSTAND YOU
4 ARE WITHDRAWING THE LAST QUESTION, BUT YOU'RE GOING TO
5 PROCEED ON THIS SUBJECT MATTER IN A DIFFERENT WAY?

6 MR. ROSSE: YES, YOUR HONOR.
7 THE COURT: OKAY.
8 MR. ROSSE: Q. DURING THE LATE '50S AND EARLY
9 '60S, YOU WORKED ON THE INSULATION OF BOILERS AT POWER
10 PLANTS IN SOUTHERN CALIFORNIA?
11 A. I DID.
12 Q. AND IT WAS DURING THAT TIME FRAME WHEN YOU WERE
13 INSULATING BOILERS THAT THEY DISCONTINUED THE USE OF HARD
14 BLOCK ON THE INSULATION OF BOILERS IN SOUTHERN CALIFORNIA?
15 A. THAT'S CORRECT.
16 Q. YOU WORKED AT ORMOND IN JANUARY OF 1973?
17 A. YES.
18 Q. FOR APPROXIMATELY TWO MONTHS?
19 A. YES.
20 Q. ISN'T IT TRUE THAT THIS JOB STICKS OUT IN YOUR
21 MIND BECAUSE IT WAS A NEW TYPE OF INSULATION BEING DONE AT
22 THAT JOB?
23 A. THAT'S CORRECT.
24 Q. IN FACT, THEY USED GLASS INSULATION ON FUEL
25 LINES, DIDN'T THEY?
26 A. THEY DID. IT WAS A MINERAL BLOCK, A MINERAL WOOL
27 BLOCK, MINERAL WOOL.
28 THE PROCEDURE WAS TO TAKE A FLAT PIECE AND GLUE
2966
1 IT INTO THE METAL, LIKE IT WAS EXPLAINED UP HERE. AND THEN
2 WHEN THE METAL WAS ALREADY ADHERED TO IT, AND THEN THEY PUT
3 IT ON. ONE PROCESS.
4 THEY FOUND OUT THAT IT WOULD NOT HOLD UP --
5 DO YOU WANT ME TO CONTINUE?
6 Q. SURE.
7 A. -- WOULD NOT HOLD UP TO ABUSE. SO THEY STARTED
8 PUTTING STRIPS OF HARD INSULATION IN THERE ON TOP, ONLY ON
9 THE TOP, TO KEEP IT FROM BEING DESTROYED.
10 Q. WHILE YOU WERE THERE, THEY WERE USING ALL GLASS,
11 AND IT WAS DURING THE TIME YOU WERE THERE THEY FOUND THIS
12 WAS DESTROYED AS FAST AS YOU COULD PUT IT IN?
13 THE COURT: THAT'S TWO QUESTIONS.
14 MR. ROSSE: Q. DURING THE TIME YOU WERE AT
15 ORMOND BEACH POWER PLANT, THEY WERE USING ALL GLASS IN THE
16 FUEL LINES WITH METAL JACKETING?
17 A. NOT ALL GLASS. THEY PUT A STRIP ON THE TOP.
18 THEY CUT OUT SEVERAL LAGS OF GLASS, PUT THE HARD INSULATION
19 ON THE TOP, AND THEN, THAT WAY, IF ANYBODY STEPPED ON THE
20 LINE, YOU KNOW, CRAWLED OVER IT, THEY WOULDN'T TOTALLY
21 DESTROY THE LINE, YOU KNOW, THE INSULATION.
22 Q. SIR, I'D LIKE TO REFER YOU TO PAGE 633 OF YOUR
23 DEPOSITION, BEGINNING ON LINE 19 AND CONTINUING TO 634, LINE
24 4.
25 HAVE YOU FOUND THAT PASSAGE, SIR?
26 A. YES.
27 Q. YOU WERE ASKED THE QUESTION --
28 MR. BROWN: COULD I HAVE A CHANCE TO READ IT,
2967
1 PLEASE.
2 NO OBJECTION.
3 THE COURT: YOU WANT TO READ THE QUESTIONS AND
4 ANSWERS IN THAT AREA?
5 MR. ROSSE: YES.
6 THE COURT: YOU CAN DO IT. JUST SAY "QUESTION
7 AND ANSWER" BEFORE, SO WE KNOW WHICH IS WHICH.
8 MR. ROSSE: "QUESTION: NOW, WHAT WAS THE NATURE
9 OF THE WORK THAT YOU PERFORMED AT THIS SITE?
10 "ANSWER: I DID THE TURBINE, INSULATED THE

11 TURBINE AND A LOT OF THAT FUEL OIL PIPING. AND
12 EVERYTHING OUTSIDE THE UNIT WAS METAL CLAD
13 WITH -- THE REASON I RECALL THE JOB, ONE OF THE
14 REASONS, IS BECAUSE IT WAS -- THEY USED ALL
15 GLASS, WHICH WAS VERY UNUSUAL FOR A POWERHOUSE,
16 WHICH DIDN'T HOLD UP REAL WELL BECAUSE IT WAS
17 BEING DESTROYED AS FAST AS WE COULD PUT IT IN ON
18 THE PIPES BECAUSE PEOPLE WOULD WALK ON THEM. BUT
19 IT WAS ALL GLASS ON THOSE PARTICULAR PIPES."

20 Q. DID I READ THAT CORRECTLY?

21 A. PROBABLY DID. I WAS PROBABLY REFERRING TO THE
22 OVERHEADS, THE SMALLER PIPES THAT HAD -- WERE JUST SAGGING,
23 THEY HAD BEEN DAMAGED SO MUCH.

24 Q. DOESN'T YOUR ANSWER SAY: "I DID THE TURBINE,
25 INSULATED THE TURBINE AND LOT OF THAT FUEL OIL PIPING"?

26 A. THAT'S CORRECT.

27 Q. THEN YOU PROCEEDED TO TALK ABOUT USING ALL GLASS?

28 A. I THINK WHAT I WAS REFERRING TO IS THAT A LOT OF

2968

1 THE PIPES, THE SMALLER PIPES THAT WERE ON PIPE RACKS, AND
2 THAT WAS OUTSIDE THE UNIT, LOOKING TOWARD THE UNIT -- I'M
3 NOT SURE WHAT KIND OF STATION -- IT WAS ALREADY ONE YEAR
4 OLD. IT LOOKED LIKE IT WAS FIVE OR SIX YEARS OLD ALREADY.
5 I MEAN, IT LOOKED TOTALLY BEAT.

6 THAT'S WHAT ENCOURAGED THEM TO GO TO BLOCK. WHEN
7 YOU STARTED DOING ANYTHING DOWN BELOW, WHEN WE DID FUEL OIL
8 LINES, WE PUT THE BLOCK ON TOP. THE TURBINES WERE ALL HARD
9 BLOCK.

10 Q. SO YOU WERE ASKED THE QUESTION: DID YOU RECALL
11 THE USE OF ANY CALCIUM SILICATE ON THAT JOB; CORRECT?

12 MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO
13 THAT.

14 THE WITNESS: I MEAN, I WAS ASKED THAT --

15 THE COURT: HOLD ON.

16 MR. BROWN: IF WE'RE GOING TO REFER TO THE
17 DEPOSITION, REFER TO IT, NOT QUOTE IN THE QUESTION LIKE THAT
18 OR JUST ASK THE SAME QUESTION.

19 THE COURT: IF THAT'S THE OBJECTION, IT'S
20 OVERRULED.

21 YOU GO AHEAD.

22 MR. ROSSE: Q. WERE YOU ASKED THE QUESTION IF
23 ANY CALCIUM SILICATE WAS USED ON THAT JOB AT YOUR
24 DEPOSITION?

25 A. I DON'T RECALL IF I WAS ASKED THAT, TO THAT
26 SPECIFIC THING. I DON'T RECALL.

27 Q. I REFER YOU TO PAGE 634 OF YOUR DEPOSITION,
28 BEGINNING ON LINE 5.

2969

1 A. 634.

2 Q. CONTINUING THROUGH LINE 13.

3 A. WELL, I MEAN, JUST ASK -- IF YOU COULD ASK ME THE
4 QUESTION INSTEAD OF ME TRYING TO READ ALL THIS, DECIPHER
5 THIS.

6 Q. ACTUALLY, SIR, I'M WAITING FOR YOUR COUNSEL.

7 A. PARDON ME?

8 MR. BROWN: HE DOES HAVEN'T A COUNSEL.

9 MR. ROSSE: EXCUSE ME. YOU'RE RIGHT.

10 I'M PROPOSING TO READ LINES 5 THROUGH LINE 13.

11 THE COURT: LET'S SEE IF THERE'S AN OBJECTION.

12 MR. BROWN: NO OBJECTION.

13 THE COURT: YOU MAY READ.

14 MR. ROSSE: "QUESTION: DO YOU RECALL ANY

15 CALCIUM SILICATE MATERIAL BEING USED ON THIS JOB?

16 "ANSWER: THE TURBINE THAT I DID HAD CALCIUM
17 SILICATE. AND THE PROCESS WAS THE SAME EXCEPT FOR THE FIRST
18 TIME I HAD SEEN THIS NEW PROCESS -- THIS NEW GLASS THAT THEY
19 USED, THIS FIBERGLASS CLOTH RATHER THAN ASBESTOS CLOTH. IN
20 OTHER WORDS, IT WAS LIKE THEY WOULD PUT ON A BOAT OR
21 SOMETHING. IT'S A GLASS WEAVE CLOTH."

22 THE WITNESS: THE FINISH ON THE TURBINE OR ANY
23 KIND OF VALVE, UNDER USUAL DESIGN, I MEAN, IS SOMETHING THAT
24 WASN'T TOTALLY ROUND. YOU HAD TO PUT CLOTH. USED TO BE
25 ASBESTOS CLOTH.

26 AND THEN THEY STARTED COMING OUT WITH FIBERGLASS
27 CLOTH, WHICH WAS LIKE YOU PUT ON A BOAT. IT'S CROSS-WEAVE
28 MATERIAL.

2970

1 AND THEN YOU HAVE -- AFTER YOU GET THE TURBINE
2 TOTALLY SMOOTHED OUT, FINISHED OFF, THEN YOU ADHERE IT WITH
3 AN ADHESIVE, LAY THIS CLOTH ON IT, EITHER ASBESTOS CLOTH OR
4 FIBERGLASS CLOTH.

5 I THINK THAT'S WHAT I WAS REFERRING TO.

6 MR. ROSSE: Q. BUT YOU WERE ASKED IF ANY
7 CALCIUM SILICATE MATERIAL WAS USED ON THIS JOB DURING YOUR
8 DEPOSITION. YOU DIDN'T MENTION THE USE OF ANY CALCIUM
9 SILICATE ON PIPES, DID YOU?

10 A. I DON'T RECALL.

11 MR. BROWN: YOUR HONOR, THAT'S A MISLEADING
12 QUESTION.

13 I'D LIKE TO POINT TO ANOTHER POINT IN THE
14 DEPOSITION. MAYBE WE SHOULD HAVE A SIDEBAR.

15 THE COURT: WAIT A MINUTE. IT'S NOT AN
16 OBJECTION, THAT THAT'S A MISLEADING QUESTION.

17 IF YOU WANT TO READ SOME OTHER PORTION OF THE
18 DEPOSITION ON YOUR REDIRECT, YOU CAN DO THAT.

19 LET ME JUST HEAR WHAT THIS QUESTION WAS. WHY
20 DON'T YOU JUST REPHRASE IT.

21 MR. ROSSE: Q. AT YOUR DEPOSITION, YOU WERE
22 ASKED THE QUESTION: "DO YOU RECALL ANY CALCIUM SILICATE
23 MATERIAL BEING USED ON THIS JOB?"

24 AND YOUR ANSWER AT THAT TIME DIDN'T MENTION ANY
25 USE OF IT ON PIPING, DID IT?

26 MR. BROWN: YOUR HONOR, THAT'S NOT IN THE
27 DEPOSITION.

28 MR. ROSSE: COULD WE HAVE --

2971

1 MR. BROWN: WE ALREADY READ THE QUESTION AND THE
2 ANSWER. THERE'S ANOTHER QUESTION AND ANSWER.

3 THE COURT: THAT'S FINE. YOU CAN READ THAT WHEN
4 IT GETS TO BE YOUR TURN.

5 IF THE OBJECTION TO THE QUESTION IS: "HOW DID HE
6 ANSWER THAT QUESTION," THE JURY ALREADY HEARD HIS ANSWER TO
7 THAT QUESTION.

8 MR. BROWN: ALL RIGHT, YOUR HONOR.

9 THE COURT: SO LET'S GO ON TO SOMETHING ELSE.

10 IF THAT IS THE QUESTION. IF THERE'S SOMETHING ELSE
11 SOMEWHERE ELSE, WE CAN DEAL WITH THAT AT THE TIME IT ARISES.

12 IF ALL YOU ARE ASKING IS THE ANSWER TO THE
13 QUESTION WE JUST READ TO THE JURY, WE HAVE ALREADY HEARD
14 THAT.

15 MR. ROSSE: MY QUESTION WAS IF HE RECALLED
16 REFERRING TO ANY CALCIUM SILICATE ON THE PIPES AT THAT TIME.

17 THE COURT: AT WHAT TIME?

18 MR. ROSSE: AT THE TIME HE WAS ASKED THIS
19 QUESTION IN HIS DEPOSITION.

20 THE COURT: IN ANSWER TO THAT QUESTION OR AT

21 SOME OTHER PLACE IN THE DEPOSITION?
22 MR. ROSSE: AT ANY TIME IN HIS DEPOSITION.
23 YOUR HONOR, I WILL WITHDRAW IT.
24 THE COURT: OKAY.
25 MR. ROSSE: Q. YOU UNDERSTAND THAT THE USE OF
26 ASBESTOS IN CALCIUM SILICATE INSULATION WAS DISCONTINUED AT
27 SOME POINT?
28 A. I UNDERSTOOD THAT THEY -- I DON'T RECALL THE
2972
1 EXACT DATE, BUT FROM THE WORD THAT WAS GOING AROUND, THEY
2 WEREN'T ALLOWED TO MANUFACTURE IT ANYMORE, BUT THEY WERE
3 ENTITLED TO USE ANYTHING THAT HAD BEEN PREMANUFACTURED PRIOR
4 TO THE DATE THAT THEY SAID "NO MORE ASBESTOS."
5 WHAT DATE THAT IS, I DON'T KNOW.
6 Q. ISN'T IT TRUE YOU DON'T KNOW WHETHER THE CALCIUM
7 SILICATE USED AT ORMOND BEACH CONTAINED ASBESTOS OR NOT?
8 A. THE ONLY THING I CAN SAY THAT I RECALL, RIGHT
9 ABOUT MID-70S, AROUND '75, I STARTED SEEING BOXES THAT SAID
10 "CONTAINS NO ASBESTOS," BIG LETTERING, "CONTAINS NO
11 ASBESTOS."
12 I DON'T RECALL THAT ON THAT JOB AT ORMOND BEACH.
13 WHEN I WAS THERE, I DON'T RECALL SEEING ANY BOXES THAT SAID
14 "NO ASBESTOS."
15 Q. DO YOU KNOW WHETHER THE CALCIUM SILICATE USED AT
16 ORMOND BEACH CONTAINED ASBESTOS OR NOT?
17 A. I WOULD SAY THAT IT PROBABLY DID. WE HAD OUR
18 MUDS AND OUR CALCIUM SILICATE BLOCK. AND PIPE COVERING WAS
19 REALLY THE ONLY THING, OTHER THAN THE TYPE GLASS OR ASBESTOS
20 CLOTH.
21 AND SOMETIMES WE HAD USED AMOSITE EXPANSION
22 JOINTS THAT WAS ASBESTOS.
23 MR. ROSSE: YOUR HONOR, I PROPOSE TO READ PAGE
24 634, LINES 14 THROUGH 17.
25 THE WITNESS: I GET TOTALLY CONFUSED WHEN I
26 START READING THIS. IT HAS -- WHAT IS IT, THE NUMBER?
27 THE COURT: HE'S NOT ASKING YOU A QUESTION. HE
28 IS JUST SAYING HE WOULD LIKE TO READ THAT AT THIS POINT.
2973
1 I NEED TO ASK MR. BROWN WHETHER HE OBJECTS OR
2 NOT. YOU ARE NOT BEING ASKED ANYTHING RIGHT NOW AT THIS
3 POINT.
4 YOU WANT TO READ PAGE 634?
5 MR. ROSSE: 634, LINES 14 THROUGH 17.
6 THE COURT: OKAY. ANY OBJECTION?
7 MR. BROWN: NO. BUT I WOULD ALSO LIKE HIM TO
8 READ PAGE 638.
9 THE COURT: SIX WHAT?
10 MR. BROWN: 638, LINES 17 THROUGH 19.
11 THE COURT: YOU CAN READ THAT ON YOUR REDIRECT.
12 THAT'S NOT THE SAME QUESTION. OKAY. YOU CAN DO THAT ON
13 YOUR TIME.
14 OKAY. ANY OBJECTION TO HIM READING WHAT HE WANTS
15 TO READ? NO?
16 MR. BROWN: NO, YOUR HONOR.
17 THE COURT: YOU MAY READ.
18 MR. ROSSE: "QUESTION: DO YOU KNOW IF THE
19 CALCIUM SILICATE MATERIAL THAT YOU USED ON THE
20 TURBINE AT THIS JOBSITE CONTAINED ASBESTOS?
21 "ANSWER: NO, I DO NOT."
22 Q. NOW, YOU TALKED ABOUT THIS MATERIAL THAT
23 METALCLAD INSTALLED IN THE PIPES.
24 THERE WAS A JACKETING WITH ROCK WOOL AND YOU SAID
25 CALCIUM SILICATE GLUED INTO IT?

26 A. IT WAS THE GLASS. THEIR PROCEDURE, THEY WERE
27 JUST STARTING. I BELIEVE THIS MAY HAVE BEEN THE FIRST JOB
28 THEY TRIED TO USE THIS GLASS INSIDE, OR MINERAL WOOL. THEY

2974

1 REFERRED TO IT AS A GLASS. REALLY, IT'S MINERAL WOOL OF
2 SOME SORT.

3 IT WAS THE FIRST PROCEDURE THEY TRIED ON THE
4 POWERHOUSE, AND I THINK PROBABLY A FAILURE, FOR THE FACT IS
5 DESTRUCTION OF -- THE MATERIAL BEING DESTROYED. THAT'S WHEN
6 THEY STARTED PUTTING THE BLOCK ON TOP, TO RETAIN THE
7 STRENGTH OF IT.

8 Q. YOU WERE ON THE SITE FOR TWO MONTHS?

9 A. TWO MONTHS.

10 Q. DURING THAT TWO-MONTH PERIOD THAT THEY INSTALLED
11 THIS STUFF, IT WAS DESTROYED AND THEY CHANGED THE PROCEDURE,
12 ALL DURING THAT TWO-MONTH TIME FRAME?

13 A. I DON'T THINK THEY REMOVED ANYTHING OTHER THAN
14 THE CONTRACTOR HAD REPLACED IT. IT WAS DAMAGED SO BAD, THEY
15 FOUND RIGHT AWAY THEY NEEDED TO DO A DIFFERENT PROCESS.
16 THAT'S WHEN THEY STARTED PUTTING HARD BLOCK ON TOP OF THE
17 PIPES, SO IT WOULDN'T -- AND EQUIPMENT, SO IT WOULD NOT GET
18 CRUSHED.

19 AND I THINK THAT PROCEDURE PROBABLY HAD FOUND OUT
20 TO BE -- TO DO THAT ON THAT PARTICULAR JOB.

21 Q. THIS METAL-JACKETED INSULATION, THAT WAS
22 MANUFACTURED OR PREPARED AT THE METALCLAD WAREHOUSE;
23 CORRECT?

24 A. THAT'S CORRECT.

25 Q. SO ALL THIS ROCK WOOL, THIS CALCIUM SILICATE WAS
26 GLUED INTO THE JACKETING AT THE METALCLAD WAREHOUSE?

27 A. NOT THE CALCIUM SILICATE, BECAUSE IT WOULDN'T
28 STAY IN THERE. SO YOU HAD TO -- WHAT WE HAD TO DO, WHEN THE

2975

1 INSULATION COME OUT WITH THE JACKETING, WE WOULD TAKE MAYBE
2 TWO STRIPS OF INSULATION OUT ON THE VERY TOP.

3 WHERE YOU PUT THE CALCIUM SILICATE, YOU MADE ROOM
4 FOR THE NEW BLOCK, PUT IT IN THERE, THEN PUT THE METAL
5 AROUND WHERE IT BELONGED.

6 AND THEN YOU HAD TO PUT A BAND ON THERE TO SECURE
7 IT ONTO THE LINE, THE PIPELINE. THAT WAS DONE OUT ON THE
8 JOB.

9 BUT THE PREMANUFACTURED MATERIAL WAS DONE IN THE
10 SHOP AT METALCLAD, AND THEN BROUGHT IT OUT TO THE JOB. WE
11 REMOVED THE GLASS MINERAL WOOL INSULATION, PUT IN YOUR HARD
12 BLOCK, YOU KNOW, PULL IT TOGETHER AND BAND IT, TIGHTENED IT
13 UP AND SECURED IT.

14 Q. YOU TALKED ABOUT THIS PROCESS DURING THE TIME YOU
15 WERE DEPOSED, CORRECT, ABOUT THIS MANUFACTURING PROCESS?

16 A. I DON'T RECALL IF I HAD TALKED ABOUT IT. IF IT
17 WAS ASKED -- IF IT WAS ASKED OF ME, I TOLD HIM WHAT I KNEW.

18 Q. COULD YOU REFER TO PAGE 642 OF YOUR DEPOSITION,
19 BEGINNING ON LINE 19, LINE 19, CONTINUING THROUGH 643, LINE
20 2.

21 A. WHAT IS IT YOU WANT TO KNOW?

22 Q. DURING THE TIME OF YOUR JOBS, YOU TALKED -- YOU
23 SAID -- THIS IS THE ANSWER:

24 "ANSWER: METALCLAD I BELIEVE MADE THEIR OWN
25 INSULATION. THEY HAD GLUED ROCK WOOL INSIDE THE
26 METAL JACKETING AND THAT'S HOW THAT WAS APPLIED,
27 THEN IT WAS ALREADY STUCK TO IT. AND I -- AND
28 THEY USED TO MANUFACTURE -- PUT THAT TOGETHER IN

2976

1 THEIR WAREHOUSE IN L.A."

2 A. THAT'S CORRECT.
3 Q. AT THAT TIME, YOU DIDN'T TALK AT ALL ABOUT HAVING
4 TO TAKE THIS APART AND PUT IN CALCIUM SILICATE?
5 MR. BROWN: ARGUMENTATIVE.
6 THE WITNESS: NO, BECAUSE --
7 MR. BROWN: ARGUMENTATIVE, YOUR HONOR.
8 THE COURT: SUSTAINED.
9 WE DON'T KNOW WHETHER HE WAS ASKED THAT QUESTION
10 OR NOT.
11 SUSTAINED.
12 MR. ROSSE: Q. DID YOU YOURSELF WORK ON THE
13 INSULATION OF THE MAIN STEAM LINES ON THAT JOB?
14 A. I DID NOT WORK ON THE MAIN STEAM LINES, THAT I
15 RECALL. I KNOW I WORKED ON THE TURBINE. I WORKED OUT ON
16 THE PUMP STATION AND THE FUEL OIL LINES.
17 Q. I THINK YOU ALREADY MENTIONED THAT THE CLOTH THEY
18 USED AROUND THE TURBINE, THAT WAS GLASS CLOTH, NOT AN
19 ASBESTOS CLOTH?
20 A. THERE COULD HAVE BEEN SOME ASBESTOS CLOTH. I
21 THINK THAT'S THE FIRST TIME I STARTED SEEING GLASS CLOTH.
22 BUT WE ALSO USED ASBESTOS CLOTH.
23 IN OTHER WORDS, THEY USED WHAT THEY COULD GET.
24 SO IF THEY NEEDED A LOT OF CLOTH, THEY STARTED BRINGING IN
25 FIBERGLASS CLOTH. IF IT WASN'T AVAILABLE, THEY USED
26 ASBESTOS CLOTH UNTIL IT WAS ALL GONE AND THERE WAS NO MORE
27 COULD BE MANUFACTURED OR SOLD, I GUESS. I DON'T KNOW.
28 Q. WOULD YOU AGREE THAT THIS WAS A SOMEWHAT UNUSUAL
29777
1 JOB, THAT THIS WAS THE FIRST TIME YOU SAW FIBERGLASS CLOTH
2 USED? IT WAS THE FIRST TIME YOU SAW ROCK WOOL AND METAL
3 JACKETING ON PIPE?
4 A. I BELIEVE IT WAS THE FIRST TIME THAT PROCEDURE
5 WAS DONE. I BELIEVE IT WAS.
6 MR. ROSSE: THANK YOU, SIR.
7 THE WITNESS: YOU'RE WELCOME.
8 MS. CHABER: ANYTHING FURTHER FOR MR. MONDT BY
9 ANYBODY? ANY TAKERS?
10 MR. BROWN: JUST ONE THING, YOUR HONOR.
11 THE COURT: OKAY.
12
13 REDIRECT EXAMINATION
14 BY MR. BROWN: Q. READING FROM PAGE 638 OF THE
15 DEPOSITION THAT I REFERRED TO, LINES 17 THROUGH 20.
16 "QUESTION" --
17 THE COURT: YOU WANT --
18 MR. ROSSE: OBJECTION. HEARSAY.
19 MR. BROWN: IT'S THE PART I REFERRED YOU TO
20 EARLIER.
21 THE COURT: LET ME RULE ON THE OBJECTION. I
22 NEED TO LOOK AT IT.
23 MR. BROWN: 638, 17.
24 THE COURT: LET ME ASK YOU A QUESTION. WHEN YOU
25 GAVE THAT ANSWER, WERE YOU BASING THAT ANSWER ON WHAT
26 SOMEBODY ELSE TOLD YOU OR WERE YOU BASING IT ON WHAT YOU SAW
27 YOURSELF OR WERE YOU BASING IT, FOR EXAMPLE, ON SOMETHING
28 ELSE? DON'T TELL US WHAT THE ANSWER WAS. JUST TELL US WHAT
2978
1 IS BASIS OF THE ANSWER?
2 THE WITNESS: WHICH ONE ARE YOU TALKING ABOUT?
3 THE COURT: LOOK AT PAGE 638, LINE 17 THROUGH
4 19. DON'T READ IT OUT LOUD. JUST READ IT TO YOURSELF.
5 AND MY QUESTION TO YOU, AFTER YOU READ YOUR OWN
6 ANSWER IS: DID YOU BASE THAT ANSWER ON WHAT SOMEBODY TOLD

7 YOU, ON WHAT YOU SAW OR ON SOMETHING ELSE?
8 WHAT DID YOU BASE YOUR ANSWER ON?
9 THE WITNESS: I'M BASING THAT QUESTION ON THE
10 FACT --
11 MR. BROWN: WAIT A MINUTE. ALL RIGHT.
12 THE COURT: DON'T TELL US WHAT THE ANSWER IS.
13 ALL I WANT TO KNOW IS WHAT YOU ARE BASING IT ON?
14 CAN YOU TELL ME THAT WITHOUT DISCLOSING THE ANSWER?
15 MR. ROSSE: IF HE HAD EXPERIENCE?
16 THE COURT: WHAT?
17 MR. ROSSE: HIS EXPERIENCE.
18 THE COURT: THAT'S A POSSIBILITY.
19 CAN YOU TELL US, IN SHORT, WHAT YOU ARE BASING
20 THAT ANSWER ON?
21 IS THAT A DIFFICULT QUESTION?
22 THE WITNESS: LET ME READ IT AGAIN. SOMETIMES
23 WHEN YOU'RE DOING A DEPOSITION, THERE'S A LOT OF PEOPLE
24 ASKING YOU DIFFERENT QUESTIONS AND IT COULD COME OUT
25 DIFFERENT.
26 THE COURT: I JUST WANT TO KNOW WHAT YOU ARE
27 BASING YOUR ANSWER ON IN ORDER TO DETERMINE WHETHER WE
28 SHOULD READ THE ANSWER OR NOT TO THE JURY.
2979
1 LET ME JUST SAY, MR. BROWN, WHY DIDN'T YOU ASK
2 THESE QUESTIONS INSTEAD OF ME?
3 I NEED TO KNOW THE FOUNDATION FOR THIS ANSWER.
4 YOU ASK IT ANY WAY YOU WANT TO ASK IT. YOU'RE THE ONE THAT
5 WANTS TO READ IT.
6 I NEED TO KNOW A LITTLE MORE ON THE FOUNDATION
7 BEFORE I RULE.
8 MR. BROWN: YOUR HONOR, THERE IS ANOTHER GROUND
9 FOR READING IT, IN ADDITION TO WHAT YOU WERE SUGGESTING.
10 IT'S A POTENTIAL PROBLEM.
11 THE COURT: WHY DON'T DO --
12 MR. BROWN: THIS PUTS WHAT WAS READ IN CONTEXT.
13 THE COURT: WHY DON'T YOU DO THIS FIRST, BECAUSE
14 THIS MAY ELIMINATE THE NEED TO GET TO THAT ISSUE.
15 MR. BROWN: ALL RIGHT.
16 Q. IN TERMS OF WHAT INSULATION WAS BEING USED WITH
17 RESPECT TO THE PIPES LEADING UP TO THE BOILER, HOW DID YOU
18 KNOW IN THE JOB THERE AT ORMOND BEACH WHAT KIND OF
19 INSULATION WAS BEING USED?
20 A. ALL THE THINGS THAT I WORKED ON, I KNOW EXACTLY
21 WHAT WAS USED, WHAT I DONE.
22 Q. SURE.
23 A. NOW THE MAIN STEAM LINES, I DON'T BELIEVE I EVER
24 SEEN ANY MAIN --
25 MR. ROSSE: OBJECTION, YOUR HONOR.
26 NONRESPONSIVE.
27 THE COURT: HE KNOWS WHAT HE WORKED ON, AND I
28 THINK HE'S JUST TELLING US HE DIDN'T WORK ON MAIN STEAM
2980
1 LINES.
2 MR. BROWN: I DON'T KNOW.
3 THE COURT: IS WHAT THAT YOU ARE SAYING?
4 THE WITNESS: I DID NOT WORK ON MAIN STEAM
5 LINES, NOT THAT I CAN REMEMBER THAT I WORKED ON MAIN STEAM
6 LINES.
7 THE COURT: HOLD ON. I'M GOING TO OVERRULE THE
8 OBJECTION. ALL HE WAS TELLING US IS WHAT HE DIDN'T WORK ON.
9 MR. ROSSE: THAT'S NOT WHAT HE WAS SAYING. HE
10 WAS STARTING TO TELL US WHAT WAS USED THERE.
11 THE COURT: NO, HE WASN'T. THAT'S NOT WHAT HE

12 JUST SAID.
13 WHAT YOU JUST SAID, AS I UNDERSTOOD IT, YOU NEVER
14 YOURSELF WORKED ON THE MAIN STEAM LINES?
15 THE WITNESS: ON THAT PARTICULAR JOB, I DON'T
16 BELIEVE I DID.
17 THE COURT: OKAY. I'M GOING TO LEAVE THAT IN
18 THE RECORD.
19 MR. BROWN: Q. WHERE WERE THE MAIN STEAM LINES
20 IN RELATIONSHIP TO WHERE YOU WERE WORKING?
21 A. THE MAIN STEAM LINES COME FROM, USUALLY THE
22 TURBINE LEVEL, JUST BELOW THE TURBINE LEVEL, ALL THE WAY TO
23 THE BOILER, ALL THE WAY UP TO THE BOILER.
24 Q. YOU WERE WORKING -- YOU WERE WORKING GENERALLY IN
25 THAT AREA?
26 A. DOWN BELOW, YES.
27 Q. COULD YOU SEE THEM -- DID YOU SEE THE WORK BEING
28 DONE?

2981

1 A. RIGHT NOW, I CAN'T RECALL, WHERE YOU'RE JUST
2 WATCHING THEM SPECIFICALLY.
3 Q. DID YOU SEE THE MATERIAL BEING BROUGHT ON THE JOB
4 FOR THE INSULATION OF THE PIPES? THAT IS, NOT NECESSARILY
5 SEE THE TRUCK DRIVE IN, BUT DID YOU SEE INSULATION WHERE IT
6 WAS STORED BEFORE IT WAS ACTUALLY INSTALLED?
7 A. I DON'T RECALL THAT.
8 Q. ALL RIGHT. DO YOU BELIEVE YOU KNOW WHAT THE
9 INSULATION WAS ON THE MAIN STEAM LINES?
10 MR. ROSSE: OBJECTION, YOUR HONOR. LACKS
11 FOUNDATION. RELEVANCE.
12 THE COURT: DOES HE KNOW. YOU DON'T HAVE TO
13 TELL US WHAT IT IS. DON'T TELL US WHAT YOU KNOW. JUST
14 ANSWER THE QUESTION: DO YOU BELIEVE YOU KNOW? BUT DON'T
15 TELL US WHAT YOU KNOW. THAT IS EITHER A YES OR NO.
16 THE WITNESS: I BELIEVE I KNOW.
17 MR. BROWN: Q. AND WHAT IS THE REASON --
18 WHAT'S THE FOUNDATION -- WRONG WORD -- WHAT'S THE SOURCE OF
19 YOUR KNOWLEDGE?
20 THE COURT: NOW, LOOK. DON'T TELL US WHAT YOUR
21 KNOWLEDGE IS.
22 IN ANSWER TO THIS QUESTION, DON'T TELL US WHAT
23 THE STEAM LINES ARE MADE OF. JUST TELL US HOW YOU KNOW.
24 WHY DO YOU THINK YOU KNOW THE ANSWER TO THAT QUESTION,
25 WITHOUT TELLING US WHAT THE ANSWER TO THE QUESTION IS? WE
26 DON'T WANT TO KNOW WHAT YOU THINK THEY'RE MADE OUT OF. WE
27 JUST WANT TO KNOW THE BASIS OF YOUR VIEW THAT YOU KNOW THE
28 ANSWER TO THAT QUESTION.

2982

1 DO YOU UNDERSTAND THE DISTINCTION THERE?
2 THE WITNESS: I THINK SO.
3 THE COURT: OKAY.
4 THE WITNESS: THE LINES ARE RUNNING 1,000
5 DEGREES OR BETTER. YOU USUALLY HAVE HIGH-TEMP BLOCK ON IT.
6 YOU CAN'T USE JUST ANY MATERIAL ON IT. IT HAS TO BE
7 SOMETHING THAT WILL RETAIN 1,000 DEGREES OR PLUS DEGREES.
8 IT REQUIRES A HIGH-TEMP BLOCK OR SOMETHING VERY HIGH-TEMP.
9 MR. BROWN: Q. SO THAT'S WHAT YOU USED ON --
10 A. THE TURBINE.
11 Q. RIGHT. THAT'S ASBESTOS-CONTAINING, ISN'T IT?
12 A. I WOULD SAY THAT'S RIGHT. IT HAD ASBESTOS AT
13 THAT TIME. IT WOULD HAVE ASBESTOS IN IT --
14 MR. BROWN: THANK YOU.
15 THE WITNESS: -- AT THAT TIME FRAME.
16 MR. BROWN: THAT'S ALL THAT I HAVE.

17 THE COURT: ANYTHING FURTHER FOR MR. MONDT?
18 MR. ROSSE? ANYBODY ELSE?
19 MR. ROSSE: YES, I DO, YOUR HONOR.
20 PAGE 638, LINES 21 THROUGH 639, LINE 2.
21 MR. BROWN: RELEVANCE, YOUR HONOR.
22 THE COURT: RELEVANCE. IF THAT IS THE
23 OBJECTION, IT'S OVERRULED.
24 YOU CAN READ.
25
26 RE-CROSS-EXAMINATION
27 MR. ROSSE: "QUESTION: DO YOU KNOW WHO
28 MANUFACTURED ANY OF THAT CALCIUM SILICATE PIPE
2983 COVERING?"
1 ACTUALLY, IN ORDER TO PUT IT IN CONTEXT, I GUESS
2 I HAVE TO GO BACK TO LINE 19.
3 THE COURT: LINE 19 IS AN ANSWER.
4 MR. ROSSE: YOU ARE RIGHT. LINE 17.
5 THE COURT: ALL RIGHT.
6 IS THERE ANY OBJECTION? HE WANTS TO GO BACK TO
7 LINE 17. NO OBJECTION?
8 MR. BROWN: NO.
9 THE COURT: OKAY. YOU CAN GO AHEAD.
10 MR. ROSSE: "QUESTION: DID YOU SEE WHAT SORT
11 OF MATERIALS WERE USED TO INSULATE THE PIPES
12 LEADING UP TO THE BOILER?
13 "ANSWER: THE -- ALL THE MAIN STEAMS ARE DONE
14 WITH CAL. SIL., CALCIUM SILICATE.
15 "QUESTION: DO YOU KNOW WHO MANUFACTURED ANY OF
16 THAT CALCIUM SILICATE PIPE COVERING?
17 "ANSWER: I DO NOT.
18 "QUESTION: AND YOU DON'T KNOW ONE WAY OR
19 ANOTHER WHETHER THAT MATERIAL STILL HAD ASBESTOS
20 IN IT BY THAT TIME?
21 "ANSWER: I DO NOT."
22 MR. ROSSE: NO FURTHER QUESTIONS.
23 THE COURT: ANYTHING FURTHER BY ANYBODY FOR MR.
24 MONDT?
25 OKAY. HEARING NOTHING, YOU MAY STEP DOWN, MR.
26 MONDT.
27 THE WITNESS: OKAY.
28
2984
1 THE COURT: WHY DON'T YOU LEAVE THAT MATERIAL
2 THERE. EITHER COUNSEL OR TATSUO WILL GET IT.
3 THAT'S FINE. THEY WILL PICK IT UP.
4 THE WITNESS: AM I THROUGH?
5 THE COURT: YOU'RE THROUGH.
6 MR. MONDT ASKED ME IF HE IS THROUGH.
7 MAY I EXCUSE THE WITNESS?
8 MR. BROWN: HE IS EXCUSED.
9 MR. ROSSE: YES, YOUR HONOR.
10 MR. BROWN: HE'S EXCUSED.
11 THE COURT: YOU ARE EXCUSED.
12 (WITNESS EXCUSED)
13 THE COURT: WHO IS OUR NEXT WITNESS?
14 MR. BROWN: THANK YOU VERY MUCH.
15 MR. LEONARD WHITELEY.
16 THE CLERK: PLEASE STAND RIGHT HERE AND RAISE
17 YOUR RIGHT HAND. THIS WAY, PLEASE.
18 TESTIMONY OF
19 LEONARD WHITELEY,
20 A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN
21 DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE CLERK: PLEASE STATE YOUR NAME.
23 THE WITNESS: LEONARD WHITELEY.
24 MR. BROWN: PLEASE SPELL YOUR LAST NAME.
25 THE WITNESS: W-H-I-T-E-L-E-Y.
26 THE CLERK: IS LEONARD L-E-O-N-A-R-D?
27 THE WITNESS: L-E-O-N-A-R-D.
28 THE CLERK: THANK YOU. PLEASE TAKE THE STAND.
2985
1 DIRECT EXAMINATION
2 BY MR. BROWN: Q. MR. WHITELEY, ARE YOU ONE OF
3 THE PLAINTIFFS IN THIS CASE?
4 A. YES, SIR.
5 Q. AND ARE YOU MARRIED TO THE OTHER PLAINTIFF?
6 A. YES, SIR.
7 Q. LESLIE WHITELEY?
8 A. YES, SIR.
9 Q. MR. WHITELEY, I'M JUST GOING TO ASK YOU
10 QUESTIONS, A FEW QUESTIONS HERE BEFORE NOON ABOUT YOUR
11 LIFE BEFORE YOU MET HER.
12 AND I'LL START, I THINK, WITH: WHAT YEAR YOU
13 WERE BORN AND WHERE?
14 A. I WAS BORN IN 1958 IN CARTHAGE, MISSOURI.
15 Q. HOW LONG DID YOU LIVE OUTSIDE OF CALIFORNIA?
16 A. I THINK IT WAS A COUPLE OF YEARS, A COUPLE OF --
17 FOUR YEARS, WHEN MY MOM MOVED TO CALIFORNIA.
18 Q. YOU WERE ABOUT FOUR OR FIVE YEARS OLD?
19 A. THAT'S WHY I DON'T REALLY KNOW EXACT DATES,
20 BECAUSE I WAS LITTLE.
21 Q. WHERE DID YOU MOVE TO? WHERE DID YOUR MOTHER
22 MOVE TO?
23 A. VENTURA, CALIFORNIA.
24 Q. AND HAVE YOU LIVED IN THAT VENTURA AREA RIGHT UP
25 TO NOW?
26 A. YES, SIR. WELL, VENTURA AND OJAI.
27 Q. WELL, OJAI. I MEAN, OJAI IS IN THE VENTURA AREA?
28 A. YES, IN VENTURA COUNTY.
2986
1 Q. ABOUT HOW FAR AWAY FROM VENTURA?
2 A. ABOUT 14 MILES.
3 Q. IT'S INLAND FROM THE BEACH?
4 A. YES.
5 Q. VENTURA IS RIGHT ON THE BEACH?
6 A. RIGHT.
7 Q. DID YOU GO TO SCHOOL LOCALLY?
8 A. YES.
9 Q. WHERE DID YOU GO TO SCHOOL?
10 START WITH GRAMMAR SCHOOL. THEN GO TO JUROR HIGH
11 AND THEN GO TO HIGH SCHOOL.
12 A. I WENT TO LINCOLN ELEMENTARY, WASHINGTON
13 ELEMENTARY. I WENT TO CABRILLO JUNIOR HIGH SCHOOL. THEN I
14 TRANSFERRED TO MAR VISTA HIGH.
15 Q. DID YOUR WIFE LESLIE ATTEND ANY OF THOSE SCHOOLS
16 WHILE YOU WERE THERE?
17 A. SHE ATTENDED CABRILLO JUNIOR HIGH.
18 Q. NOW, HOW MUCH OLDER, IF YOU ARE OLDER THAN YOUR
19 WIFE, ARE YOU?
20 A. ABOUT A YEAR.
21 Q. WERE YOU THERE AT THE SAME TIME AT CABRILLO?
22 A. YES.
23 Q. DID YOU KNOW WHO SHE WAS?
24 A. YEAH. JUST VAGUELY. THERE WASN'T -- I KNEW OF
25 HER.
26 Q. WHAT GRADES WERE THE JUNIOR HIGH IN VENTURA?

27 A. THEY WERE SEVENTH THROUGH NINTH.
28 Q. THREE YEARS?
2987
1 A. THREE YEARS.
2 Q. YOU WERE ONE YEAR AHEAD OF HER?
3 A. I WAS -- I THINK I WAS IN THE SAME GRADE YEAR.
4 Q. SAME YEAR?
5 A. I WAS HELD BACK THE FIRST GRADE, SO I WAS --
6 Q. SAME YEAR?
7 A. YEAH. BUT I REALLY DIDN'T KNOW HER.
8 Q. LOOKING BACK, YOU CAN RECALL HER, BUT YOU DIDN'T
9 REALLY KNOW HER?
10 A. YES, SIR.
11 Q. OKAY. WHEN DID YOU GRADUATE FROM HIGH SCHOOL?
12 A. IT WOULD BE '76. I'M GUESSING. I'M NOT VERY
13 GOOD AT DATES.
14 Q. 1976?
15 A. SOMETHING LIKE THAT, YEAH.
16 Q. WHAT IS YOUR OCCUPATION TODAY; WHAT DO YOU DO?
17 A. I'M A TRUCK DRIVER.
18 Q. HOW LONG HAVE YOU BEEN DOING THAT?
19 A. I'VE BEEN DOING THAT EVER SINCE I KNEW LESLIE.
20 Q. WE NEED A YEAR.
21 A. 1983.
22 Q. AND BEFORE THAT, WERE YOU DOING IT?
23 A. NO.
24 Q. WHAT DID YOU DO?
25 A. EXCUSE ME. I HAD BEFORE, IN THE PAST, DROVE A
26 TRUCK ON A FARM WHEN I WAS YOUNGER.
27 Q. WHEN YOU SAY YOU ARE TRUCK DRIVER TODAY, NOW,
28 WHAT KIND OF TRUCK ARE YOU DRIVING?
2988
1 A. I DRIVE A READY-MIX TRUCK.
2 Q. THAT'S A TRUCK THAT'S GOT A BIG MIXING BOWL UP
3 THERE, ON TOP, THAT TURNS AS YOU DRIVE?
4 A. YES. IT'S A CONCRETE TRUCK.
5 Q. YOU DELIVER PREMIXED CEMENTS TO JOBSITES?
6 A. YES, READY-MIX.
7 Q. WHEN DID YOU START TO DO THAT?
8 A. IN 1983.
9 Q. AND WAS THAT ABOUT THE TIME YOU MET LESLIE?
10 A. YES.
11 Q. OKAY. SO PRIOR TO 1983, OTHER THAN JUST A
12 RECOLLECTION THAT YOU REMEMBER HER FROM JUNIOR HIGH SCHOOL,
13 YOU DIDN'T HAVE ANY CONTACT WITH HER?
14 A. NO.
15 Q. ALL RIGHT. FROM THE TIME YOU GRADUATED FROM HIGH
16 SCHOOL TO 1983, JUST VERY GENERALLY, WHAT KIND OF WORK DID
17 YOU DO?
18 A. I WORKED ON A FARM. AND I DID FENCING
19 CONSTRUCTION. I WAS IN CONSTRUCTION, DIFFERENT TRADES IN
20 CONSTRUCTION.
21 Q. WAS THAT IN THE VENTURA AREA?
22 A. I WORKED IN VENTURA. I ALSO WORKED IN
23 WASHINGTON.
24 Q. THE STATE OF WASHINGTON?
25 A. STATE OF WASHINGTON.
26 Q. OKAY. NOW, WHEN YOU MET LESLIE, WHAT WAS THE
27 OCCASION? WHAT WERE THE CIRCUMSTANCES?
28 A. WE WERE IN -- I WAS IN A TRUCK DRIVING COURSE AT
2989
1 OXNARD COLLEGE.
2 Q. AND --

3 A. I WAS TRYING -- I WAS TRYING TO ACHIEVE A CLASS-1
4 LICENSE. THEY OFFERED A CLASS-1 COURSE.
5 Q. WAS LESLIE IN THAT SAME COURSE?
6 A. YES, SIR.
7 Q. HOW LONG DID THAT COURSE LAST?
8 A. I WENT TO SUMMER SCHOOL. THEY OFFERED A SUMMER
9 COURSE. THAT'S WHERE I MET HER.
10 AND THEN WE OPTED TO GO INTO THE FULL SEMESTER
11 COURSE. WE DIDN'T GET OUR CLASS-1 LICENSE IN THE SUMMER
12 COURSE, BUT WE GOT LIKE HALFWAY THROUGH IT. SO WE OPTED TO
13 GO INTO THE NEXT CLASS.
14 Q. YOU BOTH GOT THE LICENSE?
15 A. YES, SIR.
16 Q. DID LESLIE DO SOME PROFESSIONAL TRUCK DRIVING?
17 A. YES, SIR.
18 Q. WHAT DID SHE DO?
19 A. SHE HAULED STEEL ON A FLATBED.
20 Q. HOW LONG DID SHE DO THAT?
21 A. IT WAS A FEW MONTHS.
22 Q. WHAT DID LESLIE DO IN TERMS OF WORK BETWEEN WHEN
23 YOU MET HER AND WHEN YOU GOT MARRIED?
24 A. I'M NOT REALLY SURE. SHE SAID SHE DID ALL SORTS
25 OF DIFFERENT THINGS, HOUSEKEEPING, YOU KNOW, FOR LIKE HOTELS
26 AND MOTELS AND THINGS LIKE THAT.
27 SHE WORKED AT SOME NURSERIES IS WHAT I REMEMBER
28 HER MAKING REFERENCE TO.

2990

1 Q. BETWEEN WHEN YOU MET HER AND WHEN YOU MARRIED
2 HER, I ASSUME YOU HAD BEGAN TO ESTABLISH SOME KIND OF
3 RELATIONSHIP THAT LED TO MARRIAGE?
4 A. YES, SIR.
5 Q. OKAY. AT SOME POINT IN THERE, DID YOU BEGIN TO
6 LIVE WITH HER?
7 A. YEAH. YES.
8 Q. WHERE WAS THAT?
9 A. THAT WAS IN VENTURA.
10 Q. WAS SOMEBODY ELSE LIVING THERE TOO?
11 A. YES, I WAS LIVING AT MY MOM'S HOUSE.
12 Q. THE THREE OF YOU WERE LIVING TOGETHER?
13 A. YES, SIR.
14 Q. HOW LONG DID THAT LAST?
15 A. IT WAS -- WE WENT TO SUMMER SCHOOL. WE STARTED
16 KIND OF LIVING TOGETHER SHORTLY AFTER THAT OR RIGHT ABOUT
17 THAT SAME TIME.
18 IT WAS IN THAT TIME FRAME. IT WAS A COUPLE OF
19 MONTHS.
20 Q. OKAY.
21 A. IT WAS A FEW MONTHS.
22 Q. NOW, SHE HAD BEEN MARRIED BEFORE YOU MET HER?
23 A. YES.
24 Q. THERE HAS BEEN SOME REFERENCE TO HER SECOND
25 HUSBAND, WHO WAS WESLEY EMHOFF.
26 DID YOU EVER MEET HIM?
27 A. I HAVE SEEN HIM. YOU KNOW, I'VE MET HIM AT A
28 DISTANCE, NOT REALLY UP CLOSE TO SHAKE HIS HAND. I KNOW WHO

2991

1 HE IS.
2 Q. DID YOU EVER MEET DEAN MOORE, HER FIRST HUSBAND?
3 A. NO.
4 Q. WHEN DID YOU AND SHE DECIDE TO GET MARRIED?
5 A. ABOUT THE TIME WE STARTED LIVING TOGETHER.
6 Q. OKAY. AND WHAT WAS THE YEAR OF YOUR MARRIAGE?
7 A. I THINK IT WAS '86. IT WAS '86.

8 Q. SHE IS NOT LISTENING. ALL RIGHT.
9 DID YOU AND SHE DECIDE TO HAVE CHILDREN?
10 A. YES.
11 Q. AND HOW MANY HAVE YOU HAD?
12 A. WE HAD FOUR.
13 MR. BROWN: OKAY. LET ME SHOW YOU SOME PICTURES
14 HERE.
15 I'D LIKE TO MARK THESE AS PLAINTIFFS' NEXT IN
16 ORDER FOR IDENTIFICATION. I HAVE AN EXTRA SET HERE FOR YOUR
17 HONOR.
18 THE CLERK: PLAINTIFFS' EXHIBIT 1920.
19 MR. BROWN: AND IT'S A SET OF 11 PHOTOGRAPHS OF
20 LESLIE'S CHILDREN AND SOME OTHER CHILDREN.
21 THE COURT: DO YOU WANT TO DO IT A THROUGH K,
22 1920-A THROUGH K?
23 MR. BROWN: YES, THAT WOULD BE A GOOD IDEA.
24 THEY'RE ALL IN THE SAME ORDER.
25 (DOCUMENTS MORE PARTICULARLY
26 LISTED IN THE INDEX MARKED
27 FOR IDENTIFICATION PLAINTIFFS'
28 EXHIBIT #S 1920-A THROUGH K)
2992
1 MR. BROWN: WHAT DID YOU SAY THAT NUMBER WAS
2 AGAIN?
3 THE COURT: 1920-A THROUGH K.
4 MR. BROWN: OKAY.
5 (TO THE CLERK:) COULD I HAVE YOUR SET? THEY'RE
6 STAPLED.
7 Q. WOULD YOU TELL US, IS THAT LESLIE ON THE FIRST
8 PICTURE THERE?
9 A. YES, SIR.
10 Q. ABOUT HOW OLD IS SHE THERE?
11 A. I THINK SHE IS IN HIGH SCHOOL.
12 Q. OKAY. AND THE SECOND PICTURE, IS THAT LESLIE?
13 A. YES.
14 Q. AND WHO IS THAT WITH HER?
15 A. THAT'S HER MOTHER.
16 Q. AND DO YOU KNOW ABOUT WHAT YEAR THAT WAS TAKEN?
17 A. IT SAYS HERE "'72 OR '76."
18 Q. AND THE NEXT PICTURE, WHO IS THAT WITH LESLIE?
19 A. THIS IS HER SISTER CHRIS.
20 Q. LESLIE ON THE RIGHT AND CHRIS IS ON THE LEFT?
21 A. YES, SIR.
22 Q. THE NEXT PICTURE IS LESLIE.
23 DO YOU KNOW THE DATE THAT THIS PICTURE WAS TAKEN?
24 A. IT SAYS HERE IT WAS '76.
25 Q. HOW ABOUT THE NEXT PICTURE; DO YOU KNOW WHEN THAT
26 PICTURE WAS TAKEN?
27 IF YOU DON'T, IT'S OKAY. DON'T JUST READ IT,
28 WHAT IT SAYS HERE.
2993
1 A. I DON'T REALLY KNOW, BUT I WOULD -- IT SAYS IT'S
2 '76.
3 Q. ALL RIGHT. NOW, THE NEXT THREE PICTURES, YOU
4 HAVE TO BE ABLE TO IDENTIFY. WHAT ARE THEY?
5 A. THEY'RE OUR WEDDING PICTURES.
6 Q. THERE'S THREE OF THEM THERE?
7 A. YES.
8 Q. AND WHAT WAS THE DATE THAT THOSE WERE TAKEN?
9 A. MAY 3RD, '86, 1986.
10 Q. DID YOU READ THAT ON THE PICTURE?
11 WHAT ARE YOU DOING IN THAT PICTURE?
12 A. WE'RE CUTTING OUR WEDDING CAKE.

13 Q. NOW WE COME TO THE NEXT PICTURES. THE NEXT
14 SEVERAL PICTURES ALL LOOK LIKE THEY HAVE TO DO WITH SOME
15 CHILDREN.
16 WHO ARE THE TWO CHILDREN IN THE NEXT PICTURE?
17 A. THAT'S MY YOUNGER BOY, CARL, AND ELIZABETH AND
18 THEY'RE --.
19 Q. CARL -- I'M SORRY.
20 A. AND THEY'RE OUT FRONT OF THE HOUSE BLOWING
21 BUBBLES.
22 Q. HOW OLD IS CARL IN THIS PICTURE?
23 A. HE'S THREE.
24 Q. WAS THIS PICTURE TAKEN RECENTLY?
25 A. YES. IT'S FAIRLY RECENT.
26 Q. YOU SAID THE YOUNG LADY THERE WAS ELIZABETH?
27 A. THAT'S ELIZABETH.
28 Q. WHAT ARE THEY DOING THERE?
2994
1 A. THEY'RE PLAYING WITH BUBBLES OUT FRONT.
2 Q. THIS IS TAKEN AT YOUR HOUSE?
3 A. YES.
4 Q. AND THEN THE NEXT PICTURE, A YOUNG LAD THERE WITH
5 A CUB SCOUT UNIFORM?
6 A. THAT'S TREVOR.
7 Q. HE'S YOUR SECOND SON DOWN?
8 A. YES.
9 Q. NO. 2 SON?
10 A. YES.
11 Q. HOW OLD IS HE IN THAT PICTURE?
12 A. HE'S NINE.
13 Q. AND HOW RECENTLY WAS THAT TAKEN?
14 A. THAT WAS FAIRLY RECENT, IF I RECALL RIGHT. I
15 THINK IT WAS THIS YEAR.
16 Q. NOW, IT LOOKS LIKE THE NEXT PICTURE MIGHT BE THE
17 WHOLE GROUP.
18 A. THERE IS ALSO TROY IN THE BACKGROUND IN THE
19 PICTURE.
20 Q. WHERE IS HE?
21 A. IN THE TRUCK. YOU CAN SEE HIM IN THE WINDOW.
22 LOOKS LIKE TROY.
23 Q. THE NEXT PICTURE HAS TROY, TREVOR, CARL, AND
24 ELIZABETH?
25 A. YES, SIR.
26 Q. AND THERE IS A PICTURE OF A PARADE.
27 WHEN WAS THAT TAKEN?
28 A. THAT WAS TAKEN IN '98.
2995
1 Q. WAS LESLIE AT THIS PARADE?
2 A. YES, SIR.
3 Q. HAD SHE ALREADY BEEN DIAGNOSED WITH LUNG CANCER?
4 A. YES.
5 Q. HOW WAS SHE ABLE TO GET THERE?
6 A. WE TOOK HER IN A WHEELCHAIR.
7 Q. AND ARE SOME OF YOUR CHILDREN PICTURED IN THE
8 PARADE?
9 A. YEAH, I THINK SO. YES.
10 THIS WAS THE CHURCH -- THIS WAS THE CHURCH GROUP
11 THAT THEY WENT TO IN SUMMER SCHOOL, AND THE CHURCH WENT INTO
12 THE PARADE.
13 Q. THE LAST PICTURE IS A LITTLE GUY WHO IS NOT FULLY
14 CLOTHED, AND IT LOOKS LIKE HE'S DRIVING A TRACTOR.
15 WHO IS THAT?
16 A. THAT'S CARL.
17 MR. BROWN: I MOVE TO HAVE THESE ADMITTED, YOUR

18 HONOR.
19 MS. MASON: NO OBJECTION.
20 THE COURT: THEY ARE RECEIVED. 1920-A THROUGH K
21 ARE RECEIVED.
22 (DOCUMENTS MORE PARTICULARLY
23 LISTED IN THE INDEX RECEIVED
24 IN EVIDENCE AS PLAINTIFFS'
25 EXHIBIT #S 1920-A THROUGH K)
26 MR. BROWN: YOUR HONOR, IF WE HAVE TIME, JUST
27 LET THE JURY PASS THAT AMONG THEM BEFORE THEY GO TO LUNCH,
28 AND THEN GO TO LUNCH.
2996

1 THE COURT: ANY OBJECTION?
2 MS. MASON: NO, YOUR HONOR.
3 THE COURT: OKAY. YOU MAY.
4 (PLAINTIFFS' EXHIBIT NOS. 1920-A THROUGH K PASSED
5 AMONG THE JURORS)
6 MR. BROWN: YOUR HONOR, MIGHT I START OUR COPY
7 OF IT FROM THE OTHER END? THE SAME PICTURES.
8 THE COURT: ANY OBJECTION?
9 MS. MASON: NO, YOUR HONOR.
10 THE COURT: YES, YOU MAY. YOU MAY DO THAT.
11 THE COURT: WHILE THE JURY IS LOOKING AT THAT,
12 LET ME JUST TALK TO COUNSEL.
13 (COURT AND COUNSEL CONFER OUTSIDE
14 THE PRESENCE OF THE JURY)
15 THE COURT: I NEED TO MAKE SURE, JURORS, AS
16 YOU'RE LOOKING AT THEM TOGETHER THAT YOU'RE NOT DISCUSSING
17 ANYTHING ABOUT THE CASE, OR ANYTHING AT ALL.
18 OKAY. THE JURY IS DONE.
19 WHY DON'T YOU PICK THOSE UP, AND THEN I THINK
20 WE'LL RECESS FOR LUNCH.
21 JURORS, PLEASE CONTINUE TO FOLLOW THE ADMONITION
22 OVER THE NOON HOUR, AND WE'LL SEE YOU BACK AT 1:30.
23 (LUNCH RECESS TAKEN AT 12:05 P.M.)
24
25
26
27
28
2997

1 AFTERNOON SESSION 1:35 P.M.
2 WEDNESDAY, FEBRUARY 9, 2000
3 THE COURT: BACK ON THE RECORD. GOOD AFTERNOON,
4 EVERYBODY.
5 AND YOU MAY PROCEED, MR. BROWN.
6 MR. BROWN: THANK YOU, YOUR HONOR
7
8 DIRECT EXAMINATION (CONTINUED)
9 BY MR. BROWN: Q. MR. WHITELEY, LET'S START
10 WITH 1986. YOU ARE MARRIED.
11 FROM THERE UNTIL YOU MOVED INTO YOUR PRESENT
12 HOUSE, HOW MANY HOMES DID YOU LIVE IN?
13 A. WE LIVED IN -- INCLUDING THE ONE AT MEINERS OAKS,
14 IT WOULD BE THREE.
15 Q. THREE.
16 AND THAT DOES THAT INCLUDE THE ONE YOU LIVE IN
17 NOW?
18 A. YES.
19 Q. OKAY. SO IN 1986, YOU WERE LIVING IN CASITAS
20 SPRINGS?
21 A. OKAY.
22 Q. DESCRIBE CASITAS SPRINGS TO US.

23 WHAT KIND OF AN AREA IS THAT? WHERE IS IT?
24 A. BETWEEN OJAI AND VENTURA. IT'S KIND OF THE
25 MIDDLE OF VENTURA AND OJAI. IT'S KIND OF THE VALLEY, THAT'S
26 THE VALLEY THAT RUNS FROM VENTURA TO OJAI. THERE'S A LAKE
27 CASITAS THAT'S IN THE MIDDLE OF THE TWO TOWNS, AND A LITTLE
28 RURAL TOWN THAT'S ABOUT 800 TO 1,000 PEOPLE. REALLY A SMALL
2998

1 LITTLE AREA.

2 Q. GIVE US JUST SORT OF A BRIEF DESCRIPTION OF WHAT
3 YOUR LIFE WAS LIKE WHEN YOU WERE IN THE CASITAS SPRINGS
4 AREA.

5 A. JUST AN AVERAGE FAMILY LIFE. I'D GO TO WORK IN
6 THE MORNING AND COME HOME IN THE EVENING AND --

7 Q. WAS SHE WORKING?

8 A. NO.

9 Q. DID YOU HAVE YOUR FIRST CHILD THERE?

10 A. YES, IN CASITAS SPRINGS.

11 Q. THAT WAS TROY?

12 A. TROY.

13 Q. SO HE WAS BORN WHILE YOU WERE LIVING THERE?

14 A. YES.

15 Q. YOU MOVED AWAY FROM THERE ABOUT WHAT TIME?

16 A. IT WAS AROUND IN THE '90S.

17 Q. FROM THE TIME YOU LIVED THERE IN '86 UNTIL NOW,
18 YOU JUST CONTINUED TO WORK IN YOUR TRUCK DRIVING; RIGHT?

19 A. YES.

20 Q. AND SHE DIDN'T WORK OUTSIDE THE HOME?

21 A. NO.

22 Q. AND YOU HAD TROY IN CASITAS SPRINGS?

23 A. CASITAS SPRINGS.

24 Q. THE NEXT CHILD WAS BORN ABOUT A YEAR LATER?

25 A. TWO YEARS LATER.

26 Q. TWO YEARS.

27 THAT'S TREVOR?

28 A. TREVOR.

2999

1 Q. WHERE WERE YOU LIVING WHEN HE WAS BORN?

2 A. WE WERE LIVING IN MEINERS OAKS.

3 Q. HOW MUCH TIME WERE YOU SPENDING AS A FAMILY AND
4 WITH THOSE CHILDREN DURING THAT TIME, THOSE TWO CHILDREN?

5 A. THE AVERAGE AMOUNT OF TIME THAT I THINK ANYBODY
6 WOULD SPEND WITH THEIR CHILDREN AT HOME.

7 Q. WAS THERE ANYTHING ELSE SIGNIFICANT GOING ON IN
8 YOUR LIFE, JUST YOU LESLIE AND THE CHILDREN? THAT WAS ABOUT
9 IT, OR ANYTHING ELSE?

10 A. YES. AT THAT TIME?

11 Q. YES.

12 A. JUST THE AVERAGE FAMILY HOME LIFE AT THAT POINT.

13 Q. OKAY. NOW, THE NEXT MOVE WAS UP TO WHERE YOU
14 LIVE NOW? THE NEXT MOVE WAS TO WHERE YOU LIVE NOW?

15 A. YES, SIR.

16 Q. OKAY. BEFORE YOU MOVED INTO THE HOME YOU'RE IN
17 NOW, DID YOU SPEND SOME TIME TRYING TO IMPROVE OR IMPROVING
18 THE LAND WHERE THE HOUSE WAS GOING TO BE BUILT?

19 A. YES, SIR.

20 Q. WHOSE PROPERTY WAS THAT?

21 A. THAT WAS TROY'S, HER DAD'S.

22 Q. WHAT WAS THE IDEA? WHY WERE YOU IMPROVING THE
23 LAND?

24 A. HE OFFERED TO HELP FINANCE US, HELP TO GET ME AND
25 THE FAMILY INTO OUR HOME AND BE ABLE TO BUY, BECAUSE
26 PROPERTY IS KIND OF EXPENSIVE THERE.

27 HE HAD A THREE-ACRE ORANGE RANCH, AND HE SAID

28 THAT HE WOULD HELP FINANCE THAT, YOU KNOW, THE BUILDING.
3000
1 SO WE WENT OVER THERE IN OUR SPARE TIME AND
2 WORKED.
3 Q. WHAT WERE YOU DOING IMPROVING THE LAND; DOING
4 WHAT?
5 A. WE WERE CLEARING OUT ORANGE TREES. LIKE I SAID,
6 IT WAS A THREE-ACRE ORANGE RANCH.
7 AT THAT POINT, IT NEEDED A LOT OF WORK, BECAUSE
8 TROY WAS PRETTY OLD, STARTING TO RUN DOWN.
9 SO WE DID A LOT OF CUTTING OUT THE TREES AND THE
10 BRUSH. AND THERE WAS OVERGROWTH IN THE ORCHARD.
11 Q. THE HOUSE WAS BUILT THERE?
12 A. YES, SIR.
13 Q. YOU LIVE IN THAT HOUSE NOW?
14 A. YES.
15 Q. OKAY. THERE WAS SOME PROBLEMS OR SOMETHING WITH
16 ZONING SO YOU COULDN'T BUY IT?
17 A. YES. THAT'S CORRECT.
18 Q. THEY WOULDN'T LET YOU CUT IT UP INTO SMALLER
19 SECTIONS; THAT'S THE IDEA?
20 A. YES.
21 Q. BUT THAT'S WHERE YOU'VE LIVED EVER SINCE. WHAT
22 YEAR DID YOU MOVE IN THERE?
23 A. IT WAS IN THE MID-90'S.
24 Q. BY THE TIME YOU MOVED IN THERE, HOW MANY CHILDREN
25 DID YOU HAVE?
26 A. WE HAD -- WE HAD -- ELIZABETH WAS RIGHT ABOUT
27 THAT TIME, COMING INTO OUR LIVES AT THAT POINT.
28 I DON'T RECALL EXACTLY IF SHE WAS BORN IN THE
3001
1 HOUSE OR BORN PRIOR TO IT, BUT IT WAS RIGHT AROUND THAT SAME
2 TIME.
3 Q. DID THE CHILDREN GET INVOLVED IN NORMAL
4 ACTIVITIES, CUB SCOUTS, SOCCER, WHATEVER?
5 A. YEAH.
6 Q. TELL US WHAT THEY DID.
7 A. WELL, WE HAD -- TREVOR WAS INTO SOCCER, HE WAS
8 INTO CUB SCOUTS. ELIZABETH SHE WAS INTO SOCCER, T-BALL.
9 TROY WAS INTO SOCCER.
10 SO, YOU KNOW, WE DID THOSE KINDS OF ACTIVITIES.
11 WHEN WE WEREN'T AROUND THEM, WE'D BE WORKING IN THE ORCHARD.
12 Q. YOU WERE STILL WORKING YOUR JOB AND LESLIE WAS
13 STILL TAKING CARE OF THE HOUSE?
14 A. YES, SIR.
15 Q. LET ME TAKE YOU BACK NOW TO WHEN YOU MET LESLIE.
16 NOW WE ARE BACK IN 1983. OKAY?
17 A. YES.
18 Q. FROM THAT TIME FORWARD, DID YOU EVER OBSERVE HER
19 SMOKING MARIJUANA?
20 A. YES.
21 Q. HOW MANY TIMES?
22 A. TWICE.
23 Q. OKAY. DID YOU EVER OBSERVE HER USING COCAINE?
24 A. YES.
25 Q. TELL ME ABOUT THE CIRCUMSTANCES OF THAT.
26 FIRST, TELL ME HOW MANY TIMES YOU SAW THAT.
27 A. TWICE.
28 Q. WHAT WERE THE CIRCUMSTANCES?
3002
1 A. IT WAS A FRIEND OF MEAN CAME BY, AN OLD FRIEND.
2 HE HAD COME -- HE CAME BY A COUPLE OF TIMES THERE AND JUST
3 SOCIALIZED AND VISITED. AND HE HAD SOME.

4 Q. FROM YOUR OBSERVATION, DID LESLIE LIKE MARIJUANA?
5 A. NO.
6 Q. HOW COULD YOU TELL THAT; WHAT DID YOU SEE?
7 A. SHE JUST DIDN'T LIKE IT. SHE SAID IT STUNK. SHE
8 JUST DIDN'T LIKE IT.
9 Q. OKAY. YOU WERE USING IT?
10 A. YES.
11 Q. AND YOU USED IT ON UP TO ABOUT WHEN?
12 A. IT WAS ABOUT '88.
13 Q. OKAY. AND THEN YOU STOPPED?
14 A. YES.
15 Q. ANY PROBLEMS STOPPING?
16 A. NO.
17 Q. WHEN WAS THE LAST TIME LESLIE USED -- WHEN WAS
18 THE SECOND OF THOSE TWO TIMES YOU SAW HER USING IT?
19 A. IT WAS ABOUT '86.
20 Q. ALL RIGHT.
21 A. '85, '86, SOMEWHERE IN THAT.
22 Q. WHEN WAS THE LAST TIME YOU SAW HER USING COCAINE
23 IN ONE OF THOSE TWO TIMES, THE SECOND ONE?
24 A. THAT WAS -- IT WAS NOT THE SAME DAYS, BUT IT WAS
25 IN THAT SAME TIME OF '85, '86, AS I RECALL.
26 Q. DID YOU HAVE ANY TROUBLE STOPPING COCAINE?
27 A. NO.
28 Q. NOW, YOU WERE BOTH DRINKING IN 1983?
3003
1 A. YES.
2 Q. ALCOHOL, I MEAN?
3 A. '83?
4 Q. '83.
5 A. YES.
6 Q. WHAT DID YOU DRINK?
7 A. BEER.
8 Q. OKAY. AND DID THERE COME A TIME WHEN YOU DECIDED
9 TO STOP DRINKING BEER?
10 A. YES.
11 Q. WHEN WAS THAT?
12 A. IT WAS IN ABOUT '86.
13 Q. WAS THAT A DECISION YOU MADE TOGETHER?
14 A. YES.
15 Q. WHY DID YOU DECIDE TO DO THAT?
16 A. JUST -- IT JUST SEEMED TO BECOME A PROBLEM, YOU
17 KNOW, AS FAR AS WE'D START ARGUING. WE NOTICED THAT.
18 WE JUST DECIDED TO QUIT. WE WERE THINKING ABOUT
19 HAVING A FAMILY.
20 Q. DID YOU HAVE ANY TROUBLE QUITTING?
21 A. NO, SIR.
22 Q. NOW, JUST TO GET THE DATES IN RELATIVE POSITION.
23 YOU HAD STOPPED COCAINE, MARIJUANA AND YOU HAD
24 STOPPED ALCOHOL BY, IN HER CASE '86, IN YOUR CASE LATER.
25 WHEN WAS TROY BORN, THE FIRST CHILD?
26 A. HE WAS BORN IN -- WELL, HE'S 11 YEARS OLD. HE
27 WAS BORN IN '89.
28 Q. SO BEFORE HE WAS BORN, BOTH OF YOU HAD STOPPED
3004
1 ALL OF THIS STUFF?
2 A. YES. IT WAS A YEAR, JUST A LITTLE BIT OVER A
3 YEAR BEFORE TROY WAS BORN.
4 Q. THE ALCOHOL?
5 A. THE ALCOHOL.
6 Q. RIGHT. AS FAR AS MARIJUANA, I GUESS THAT WAS
7 ABOUT THREE YEARS BEFORE, AS FAR AS SHE WAS CONCERNED?
8 A. YES.

9 Q. OKAY. LET ME TAKE YOU NOW TO SMOKING.
10 WHEN YOU MET LESLIE, HOW MUCH WERE YOU SMOKING --
11 WERE YOU SMOKING? THAT WOULD BE A BETTER QUESTION.
12 A. YES.
13 Q. YOU WERE SMOKING.
14 WHEN DID YOU START?
15 A. I FIRST SMOKED MY FIRST CIGARETTE, I WAS ABOUT
16 SIX.
17 Q. SIX YEARS OLD?
18 A. YES.
19 Q. AND GIVE US SOME KIND OF HISTORY.
20 I MEAN, BY WHAT TIME WERE YOU SMOKING SEVERAL A
21 DAY? KIND OF TAKE US THROUGH IT.
22 A. WE WERE PROBABLY -- BACK THEN -- WE ARE TALKING A
23 LONG TIME AGO. BUT BACK THEN, I WOULD GO OVER TO MY BEST
24 FRIEND'S HOUSE, TODD. HIS PARENTS, THEY LEFT THEIR
25 CIGARETTES OUT ALL THE TIME.
26 THEY WOULD BE SLEEPING IN THE BEDROOM. WE'D GET
27 THEM AND GO OUT IN THE GARAGE AND SMOKE THEM.
28 THERE WOULD BE A COUPLE. PROBABLY, WE SMOKED A
3005
1 COUPLE A DAY.
2 Q. BY THE TIME YOU GOT TO JUNIOR HIGH -- THE NAME OF
3 THAT SCHOOL AGAIN WAS?
4 A. CABRILLO JUNIOR HIGH SCHOOL.
5 Q. THAT'S WHERE LESLIE WAS ALSO ALTHOUGH YOU DIDN'T
6 REALLY KNOW HER?
7 A. YES.
8 Q. WERE YOU SMOKING BY THAT TIME? IF SO, HOW MUCH?
9 A. YES. BEGINNING IN HIGH SCHOOL, IT WAS PROBABLY
10 FIVE TO 10 CIGARETTES A DAY.
11 Q. I MEAN JUNIOR HIGH.
12 A. JUNIOR HIGH SCHOOL. EXCUSE ME.
13 Q. FIVE TO 10?
14 A. OH, SOMEWHERE IN THAT NEIGHBORHOOD.
15 Q. WHAT PERCENT OF THE KIDS WERE SMOKING IN THAT
16 JUNIOR HIGH SCHOOL?
17 MR. ESCHER: OBJECTION. LACK OF FOUNDATION.
18 MR. BROWN: Q. FROM YOUR OBSERVATION.
19 THE COURT: YOU NEED TO LAY A FOUNDATION AND
20 THEN FRAME YOUR QUESTION IN TERMS OF THE FOUNDATION YOU HAVE
21 LAID.
22 IT'S OVERBROAD RIGHT NOW.
23 MR. BROWN: Q. LET'S TAKE YOUR FRIENDS, THE
24 PEOPLE YOU HUNG OUT WITH MOST OF THE TIME.
25 DID THEY SMOKE?
26 A. YES. ALL OF THEM -- MY FRIENDS AND THE GROUP
27 THAT I WAS AROUND?
28 Q. CORRECT.
3006
1 A. ALL OF THEM BUT ONE.
2 Q. FROM WHAT YOU COULD OBSERVE FROM THE REST OF THE
3 SCHOOL, SMOKING SEEMED COMMON OR UNCOMMON?
4 A. IT WAS VERY COMMON BACK THEN.
5 Q. OKAY. LET'S GO UP TO HIGH SCHOOL.
6 BY THE TIME YOU GRADUATED FROM HIGH SCHOOL, WHAT
7 WAS YOUR RATE OF SMOKING? HOW MANY CIGARETTES WERE YOU
8 SMOKING A DAY ON AVERAGE?
9 A. AT HIGH SCHOOL, I SMOKED OVER A PACK, ABOUT A
10 PACK.
11 Q. AND THAT WAS TRUE AT THE END OF HIGH SCHOOL WHEN
12 YOU GRADUATED?
13 A. YES.

14 Q. OKAY. NOW, BY THE TIME YOU MEET LESLIE, 1983,
15 WHAT ARE YOU SMOKING?
16 A. I WAS SMOKING MARLBORO.
17 Q. AND HOW MUCH?
18 A. IT WAS ABOUT A PACK, A LITTLE OVER A PACK. MAYBE
19 A PACK AND A QUARTER.
20 Q. DID YOU SMOKE MARLBORO MOST OF YOUR LIFE?
21 A. THE MAJORITY OF IT, YES.
22 Q. UP TO NOW?
23 A. YES.
24 Q. DID YOU SMOKE ANYTHING ELSE?
25 A. YEAH, I'D SMOKE, YOU KNOW, A LOT -- A LOT OF THE
26 DIFFERENT BRANDS, BUT MOSTLY MARLBORO AND CAMELS.
27 CAMELS WAS MY SECOND CHOICE.
28 Q. OKAY. WHICH MARLBOROS DID YOU SMOKE?
3007
1 A. THE REDS.
2 Q. THE REDS.
3 THOSE ARE NOT LIGHTS?
4 A. NO, THEY'RE REGULAR.
5 Q. OKAY. WELL, DID YOU AND LESLIE -- FIRST OF ALL,
6 DID YOU EVER TRY TO QUIT SMOKING?
7 A. DID I EVER TRY AND QUIT SMOKING?
8 Q. DID YOU EVER MAKE AN EFFORT TO STOP?
9 A. YES.
10 Q. AND JUST GIVE US A DESCRIPTION OF THAT, IN
11 GENERAL.
12 MORE THAN ONCE? HOW MANY TIMES?
13 A. WELL, I TRIED QUITE A FEW LITTLE TIMES THAT
14 DIDN'T REALLY GO ANYWHERE. YOU GO AN HOUR OR SO, END UP
15 JUST GIVING UP ON IT --
16 Q. WHY WOULD YOU GIVE UP --
17 A. -- IF YOU WANT TO CALL THOSE ATTEMPTS.
18 Q. WHY WOULD YOU GIVE UP AFTER SUCH A SHORT TIME?
19 A. WHAT?
20 Q. WHY WOULD YOU GIVE UP TRYING TO QUIT AFTER AN
21 HOUR OR SO?
22 A. JUST COULDN'T -- JUST DIDN'T -- THE ANXIETY WOULD
23 BE THE BEST WAY TO PUT IT. YOU GET THIS FEELING YOU'VE GOT
24 TO HAVE IT.
25 Q. NOW, DID YOU EVER ACTUALLY TRY TO QUIT AND
26 SUCCEED FOR MORE THAN A COUPLE OF HOURS?
27 A. YES.
28 Q. AND WAS THIS WITH LESLIE OR WITHOUT HER?
3008
1 A. IT WAS WITH LESLIE.
2 Q. AND DESCRIBE THAT TO US. AND TELL US WHEN.
3 A. WELL, WHEN WE WENT ON A CAMPING TRIP ONCE, AND WE
4 DECIDED TOGETHER WE WERE GOING TO MAKE AN ATTEMPT TO QUIT
5 SMOKING.
6 Q. WHERE DID YOU GO?
7 A. WE WENT TO YOSEMITE.
8 Q. WHO WAS WITH YOU, IF ANYBODY?
9 A. JUST ME AND LESLIE.
10 Q. ABOUT WHAT YEAR WAS THAT?
11 A. IT WAS -- IT WAS UP ON THE HILL. CASITAS
12 SPRINGS.
13 SO ABOUT '86.
14 Q. ABOUT THE TIME YOU WERE MARRIED?
15 A. I THINK IT WAS '87.
16 Q. OKAY. AFTER YOU WERE MARRIED, WHY DID YOU DECIDE
17 TO QUIT?
18 A. I DON'T REMEMBER EXACTLY. WE JUST DID.

19 Q. HOW DID IT GO?
20 A. NOT VERY WELL. IT WENT -- I THINK I MADE IT A
21 COUPLE OF WEEKS, AND I THINK SHE MADE IT ABOUT A WEEK, NOT
22 EVEN THAT.
23 IT WAS ON THE TRIP. WE FOUGHT AND BICKERED. IT
24 DIDN'T GO VERY WELL. IT WASN'T A VERY GOOD VACATION.
25 Q. I TAKE IT YOU BOTH WENT BACK TO SMOKING?
26 A. YES.
27 Q. DID YOU EVER TRY AFTER THAT?
28 A. YES.

3009

1 Q. WHY DID YOU TRY AFTER THAT?
2 A. I WENT TO THE DOCTOR, AND HE TOLD ME THAT HE
3 THOUGHT I WAS ON A FAST ROAD TO EMPHYSEMA.
4 Q. SO YOU TRIED TO STOP?
5 A. YES.
6 Q. DID YOU TRY TO GET LESLIE TO STOP AT THAT TIME?
7 A. YES.
8 Q. YOU ASKED HER TO STOP?
9 A. YEAH, I ASKED HER IF SHE'D TRY WITH ME.
10 Q. WHAT DID SHE SAY?
11 A. SHE TOLD ME SHE DIDN'T HAVE A PROBLEM WITH IT,
12 YOU KNOW, BECAUSE SHE WOULD SMOKE LIGHT CIGARETTES.
13 SHE HAD LOW BLOOD PRESSURE. THE DOCTOR DIDN'T
14 TELL HER SHE HAD A PROBLEM. THERE WAS NO REASON FOR HER TO
15 QUIT.
16 Q. WHEN WAS THAT, ABOUT?
17 A. THAT WAS IN THE '90S. ABOUT FOUR, FIVE YEARS
18 AGO.
19 Q. OKAY. THEN DID THE TWO OF YOU FINALLY QUIT?
20 A. YES.
21 Q. OKAY. AND WHEN WAS THAT?
22 A. THAT WAS A COUPLE OF YEARS AGO, WHEN SHE WAS
23 DIAGNOSED WITH BRONCHITIS.
24 Q. AND SHE QUIT AT THAT TIME?
25 A. YES.
26 Q. AND WHY DID YOU QUIT?
27 A. WELL, SHE ASKED IF I'D MAKE AN ATTEMPT WITH HER.
28 Q. DURING ANY OF YOUR SMOKING HISTORY RIGHT UP TO

3010

1 THE TIME YOU QUIT, DID YOU EVER HAVE AN APPRECIATION THAT
2 YOU WERE USING A PRODUCT THAT HAD A HIGH RISK OF A FATAL
3 DISEASE?
4 A. NO.
5 Q. YOU SAW LABELS ON THE CIGARETTES, DIDN'T YOU?
6 A. YEAH, I SEEN LABELS.
7 Q. AND THEY DIDN'T MAKE ANY DIFFERENCE TO YOU?
8 A. NO.
9 Q. WHY NOT?
10 A. NEVER REALLY PAID MUCH ATTENTION TO THEM.
11 Q. OKAY. DID YOU HAVE SOME REASON TO BELIEVE THAT
12 CIGARETTES MIGHT NOT BE -- I WILL WITHDRAW THAT.
13 DID YOU HAVE ANY INFORMATION THAT LED YOU TO
14 BELIEVE THAT THE RISKS OF CIGARETTES WERE NOT VERY MUCH, OR
15 IF ANYTHING?
16 A. WELL, WE HAD HEARD BOTH, YOU KNOW, OVER THE
17 YEARS. WE'VE HEARD, YOU KNOW, PEOPLE SAY ONE THING AND
18 PEOPLE SAY THE OTHER THING.
19 Q. OKAY. AND WHO DID YOU HEAR THE BOTH FROM; WHERE
20 DID THEY COME FROM?
21 A. WELL, YOU HEAR -- YOU KNOW, LIKE THE BILLBOARDS,
22 YOU KNOW. YOU'D ALSO HEAR THE TOBACCO COMPANIES IN
23 DIFFERENT ARTICLES SAYING THAT IT WASN'T BAD FOR YOU.

24 WE HAD IT IN DIFFERENT FORMS.
25 Q. OKAY. AND THEN YOU HEARD SOMETHING TO THE
26 CONTRARY TOO?
27 A. YEAH.
28 Q. OKAY. AND IN YOUR MIND, THE SERIOUSNESS OF THE
3011
1 RISK OF FATAL DISEASE, LUNG CANCER, WHATEVER, JUST DIDN'T
2 RISE TO A POINT WHERE YOU BELIEVED IT WAS NECESSARY TO QUIT
3 THEN. WOULD THAT BE ABOUT RIGHT?
4 A. YES.
5 Q. OKAY. SO MOVING NOW TO -- OH, INCIDENTALLY, DID
6 YOU AND LESLIE EVER TALK ABOUT SMOKING RISKS? DID EITHER
7 ONE OF YOU EVER TALK ABOUT SOME UNDERSTANDING THAT THERE WAS
8 A HIGH RISK OF CANCER OR ANY OTHER SERIOUS DISEASE CONNECTED
9 TO SMOKING?
10 A. JUST THE TIME WITH THE EMPHYSEMA WHEN THE DOCTOR
11 MADE THAT STATEMENT TO ME.
12 Q. SO YOU TOLD HER ABOUT THAT?
13 A. YEAH.
14 Q. OKAY. THEN SHE ANSWERED THE WAY YOU TOLD US?
15 A. YES.
16 Q. OKAY. THE DIAGNOSIS OF LUNG CANCER OCCURS ABOUT
17 JUNE OF 1998. LET'S GO TO THAT DAY.
18 DID YOU WORK THAT DAY?
19 A. YES.
20 Q. WHAT DAY OF THE WEEK WAS IT?
21 A. IT WAS A SATURDAY.
22 Q. DID YOU WORK ALL DAY?
23 A. YES.
24 Q. WHEN YOU CAME HOME, WHAT DID YOU FIND?
25 A. SHE WAS ON THE COUCH, PUKING BLOOD.
26 Q. SHE OBVIOUSLY WAS SICK?
27 A. YES.
28 Q. CAN YOU GIVE US SOME IDEA OF HER SYMPTOMS?
3012
1 A. YOU SAID DIAGNOSIS, DIDN'T YOU? THAT'S WHAT YOU
2 SAID?
3 Q. THE DAY THAT YOU LEARNED WHAT THE DOCTORS
4 THOUGHT.
5 A. SATURDAY, I CAME HOME FROM WORK, AND SHE WAS ON
6 THE COUCH IN PRETTY BAD SHAPE.
7 Q. WAS HER MOTHER THERE?
8 A. YES.
9 Q. TELL US WHAT HER OTHER SYMPTOMS WERE. WHAT ELSE
10 DID YOU SEE BESIDES WHAT YOU TOLD US, WHICH WAS BAD ENOUGH?
11 WHAT ELSE DID YOU OBSERVE ABOUT HER?
12 A. SHE COULDN'T MOVE. SHE THOUGHT SHE HAD A BAD
13 FLU.
14 Q. OKAY.
15 A. AND SHE WAS EXPERIENCING LEG WEAKNESS. SHE
16 COULDN'T HARDLY MOVE HER LEGS VERY WELL.
17 Q. WHAT DID YOU DO?
18 A. I CALLED THE DOCTOR, DR. LEONARD.
19 Q. AND JUST TELL US WHAT HAPPENED.
20 A. WELL, PRIOR TO THAT, SHE WAS GOING TO DR. LEONARD
21 TO TRY AND FIND OUT WHAT HER LEG WEAKNESS WAS, BECAUSE SHE
22 WAS EXPERIENCING GRADUALLY PROGRESSIVE WEAKNESS OF THE LEGS.
23 Q. OKAY.
24 A. SHE DIDN'T KNOW ANYTHING ABOUT HER LUNGS OR
25 ANYTHING.
26 AND A WEEK BEFORE THAT, SHE STARTED COUGHING UP A
27 SMALL AMOUNT OF BLOOD. SHE SAID SHE HAD SORENESS IN HER
28 CHEST.

3013

1 HE WENT AHEAD, TOOK A LUNG X-RAY.

2 Q. IN YOUR CONVERSATION WITH HIM OVER THE PHONE,
3 WHAT DID HE TELL YOU?

4 A. HE TOLD ME HE HADN'T GOT THE LUNG X-RAY BACK.
5 I TOLD HIM THAT I WAS PRETTY WORRIED, BECAUSE SHE
6 WAS VOMITING UP BLOOD. SHE LOOKED REALLY SICK.

7 AND HE SAID HE WOULD CALL OVER TO THE HOSPITAL
8 AND SEE WHAT THE X-RAYS SHOWED.

9 Q. OKAY. DID YOU TALK TO HIM AGAIN?

10 A. YES. HE CALLED ME BACK ABOUT FIVE MINUTES LATER.

11 Q. AND WHAT DID HE TELL YOU THIS TIME?

12 A. HE TOLD ME TO BRING HER -- BRING HER IN.

13 Q. SO WHERE DID YOU TAKE HER?

14 A. TOOK HER INTO COMMUNITY.

15 Q. IS THAT COMMUNITY HOSPITAL?

16 A. YES.

17 Q. THAT'S IN VENTURA. THAT WAS ABOUT 25, 30 MINUTES
18 AWAY?

19 A. YES.

20 Q. DO YOU RECALL WHO ELSE WENT WITH YOU, IF ANYBODY,
21 BUT YOU AND YOUR WIFE?

22 A. IT WAS HER DAD.

23 Q. SO WHEN YOU GOT TO THE HOSPITAL, WHAT HAPPENED?

24 A. THEY EXAMINED HER IN THE EMERGENCY, BECAUSE THEY
25 KNEW THERE WAS A MASS.

26 Q. OKAY.

27 A. AND AT THAT POINT, THEY DIDN'T KNOW WHAT IT WAS.
28 THEY JUST SAID IT WAS A BIG MASS, AND WAS PREDOMINANTLY TO

3014

1 THE LEFT.

2 THEY COULDN'T TELL US WHAT IT REALLY WAS UNTIL
3 THEY DID A BIOPSY. THEY HAD TO DO A BIOPSY.

4 Q. WAS SHE ADMITTED TO THE HOSPITAL?

5 A. YES.

6 Q. HOW LONG DID SHE STAY IN THE HOSPITAL ON THAT
7 OCCASION?

8 A. IT WAS ABOUT A WEEK OR A LITTLE LONGER.

9 Q. NOW, AFTER -- WHEN DID THEY DO THE BIOPSY? DID
10 THEY DO IT THAT DAY?

11 A. I THINK IT WAS A DAY OR TWO, A COUPLE OF DAYS.
12 THE NEXT DAY OR THE DAY AFTER.

13 Q. WHEN WAS THE FIRST TIME SOME DOCTOR TOLD YOU THAT
14 SHE HAD LUNG CANCER?

15 A. IT WAS DR. BRUGMAN. IT WAS THE DAY FOLLOWING THE
16 BIOPSY.

17 Q. WITHIN A FEW DAYS?

18 A. YES.

19 Q. OKAY. SO WHAT HAPPENED THEN? WHAT KIND OF
20 TREATMENT WAS PRESCRIBED FOR HER?

21 A. WELL, HE TOLD US THAT IT WOULD BE AN OUTPATIENT
22 TREATMENT.

23 Q. AND WHAT WAS IT?

24 A. IT WAS CHEMOTHERAPY, AND ALONG WITH RADIATION.

25 Q. AND THAT WENT ON FOR A PERIOD OF TIME?

26 A. YES.

27 Q. WAS SHE ABLE TO COME HOME DURING THE TIME SHE WAS
28 GETTING THAT TREATMENT?

3015

1 A. YES.

2 Q. HOW WAS SHE CARED FOR WHEN SHE WAS AT HOME?

3 A. I STILL HAD TO MAINTAIN MY JOB. SO HER MOM AND
4 DAD WOULD COME OVER AND HELP HER, ALONG WITH MY KIDS.

5 Q. OF COURSE, YOU HAD FOUR CHILDREN --
6 A. RIGHT.
7 Q. -- WHEN THIS HAPPENED?
8 A. RIGHT.
9 Q. AND WHEN THAT HAPPENED, CARL WAS HOW OLD, THE
10 BABY?
11 A. HE WAS ABOUT A YEAR.
12 Q. NOW --
13 A. A LITTLE OVER A YEAR.
14 Q. ON THE WAY TO THE HOSPITAL, ON THIS OCCASION YOU
15 TALKED ABOUT, DID YOU HAVE SOME CONVERSATION WITH LESLIE
16 ABOUT HER FEELINGS, WHAT WAS GOING THROUGH HER MIND ON THE
17 WAY TO THE HOSPITAL?
18 A. YES, SHE WAS -- SHE WAS CRYING. SHE DIDN'T WANT
19 ME TO TAKE HER. SHE WAS AFRAID THAT SHE'D NEVER COME HOME
20 AND SEE HER KIDS AGAIN.
21 Q. BUT SHE DID. OKAY. AND SHE CAME HOME.
22 AND THEN MAYBE YOU COULD TELL US: WHAT WAS HER
23 PHYSICAL CONDITION? WHAT WAS SHE ABLE TO DO THROUGHOUT THE
24 REST OF 1998, WHILE SHE WAS HAVING THIS TREATMENT AND
25 AFTERWARDS?
26 A. SHE WAS PRETTY MUCH BEDRIDDEN, YOU KNOW. SHE
27 COULD GET UP AND GO TO THE BATHROOM. THE KIDS WOULD HELP
28 HER.
3016
1 Q. OKAY.
2 A. SHE -- YOU KNOW, SHE WAS PRETTY SICK.
3 Q. SHE WASN'T DOING ANY HOMEWORK, I TAKE IT -- NOT
4 HOMEWORK -- HOUSEWORK?
5 A. NO.
6 Q. DID YOU HAVE HELP WITH THAT?
7 A. YES.
8 Q. AT SOME POINT, WE'VE HEARD THAT SHE HAD SOME
9 BRAIN RADIATION, I THINK TWICE.
10 CAN YOU RECALL WHEN THOSE WERE?
11 A. WELL, SHE HAD THEM ON THREE DIFFERENT OCCASIONS.
12 Q. WHAT WERE THE EFFECTS OF THAT? HOW DID THAT
13 IMPACT HER?
14 A. WELL, EACH TIME THEY DO THIS, SHE GETS REALLY
15 TIRED AND IT JUST DRAINS HER.
16 THE FIRST TIME WAS THE DOCTOR OPTED KIND OF
17 LIKE -- WHAT'S THE RIGHT WORDS? THEY LIKE DO IT JUST IN
18 CASE THERE ARE CANCER CELLS THAT WENT TO THE BRAIN. SO THEY
19 DO THAT.
20 WELL, THEY FOUND THREE TUMORS IN THE PROCESS, SO
21 THEY HAD TO DO EXTRA TREATMENT ON THOSE TUMORS. IT MIGHT
22 HAVE BEEN A FOURTH ONE. I MIGHT BE WRONG. IT MIGHT HAVE
23 BEEN A FOURTH ONE. BUT I KNOW THEY DID EXTRA RADIAL (SIC)
24 TREATMENT ON HER.
25 AND THE LAST TIME WAS THEY FOUND -- IT WAS LIKE
26 SIX MONTHS LATER OR SO -- THEY FOUND ANOTHER ONE ON THE BACK
27 OF HER HEAD.
28 Q. SO WHAT WAS THAT BRAIN TREATMENT LIKE IN TERMS OF
3017
1 HOW IT IMPACTED HER LIFE?
2 A. WELL, IT COMPLETELY SLOWED HER DOWN. AND YOUR
3 MIND DON'T WORK RIGHT ANYMORE. IT'S CONFUSING. SHE IS
4 HAVING MAJOR HEADACHES.
5 Q. ANY VISION PROBLEMS?
6 A. YES. SHE CAN'T REALLY SEE MUCH ANYMORE. SHE
7 SAID SHE HAS SPOTS IN HER EYES. SHE WON'T DRIVE. SHE CAN'T
8 DRIVE NOW.
9 Q. WHEN DID SHE STOP DRIVING?

10 A. WELL, THIS HAS BEEN A PROGRESSION, BUT PRETTY
11 MUCH RIGHT AFTER THAT LAST ONE WHERE SHE HAD SCREWS -- SHE
12 HAD TWO SURGERIES; PUT SCREWS IN HER HEAD.
13 Q. OKAY.
14 A. AND SHORTLY AFTER THAT, IT PRETTY MUCH TOOK HER
15 VISION AWAY.
16 Q. FROM YOUR OBSERVATION AND FROM WHAT YOU AND SHE
17 DISCUSSED, HOW IS SHE FACING UP TO THIS? HOW IS SHE DEALING
18 WITH IT?
19 A. IT'S BEEN TOUGH, YOU KNOW. IT'S BEEN TOUGH.
20 Q. OKAY. IS SHE OPTIMISTIC ABOUT WHAT'S GOING TO
21 HAPPEN TO HER?
22 A. SHE -- YES, SHE'D LIKE TO BE. SHE GOT -- SOME
23 DAYS SHE FEELS LIKE -- YOU KNOW, I GUESS SHE FEELS LIKE SHE
24 IS UP AGAINST A PRETTY BIG BATTLE, AND OTHER DAYS -- SHE HAS
25 ALWAYS FOUGHT. SHE HAS FOUGHT FROM DAY ONE.
26 SO, YOU KNOW, YOU HAVE TO. WHEN YOU HAVE THIS
27 SERIOUS OF A DISEASE, YOU HAVE TO. THE HARDEST THING SHE'S
28 HAD IS WITH THE KIDS. SEEING HOW --
3018
1 Q. IN WHAT RESPECT? I'M SORRY.
2 A. SEEING HOW IT'S AFFECTED THE KIDS.
3 Q. HOW HAS IT AFFECTED THEM?
4 A. WELL, IT'S JUST HARD ON A MOTHER TO SEE HER KIDS
5 HAVE TO SEE HER GO THROUGH THIS.
6 Q. HOW HAVE THEY REACTED? I'M SURE IT'S DIFFERENT.
7 HOW HAVE THE FOUR CHILDREN REACTED?
8 A. WELL, THEY KNOW THEIR MOM IS SICK. THEY KNOW
9 THERE'S SOMETHING REALLY WRONG, ESPECIALLY CARL. HE'S ALL
10 THE TIME SAYING, "MOMMY'S SICK. GOT A HEADACHE."
11 Q. THAT'S THE BABY?
12 A. THAT'S THE BABY. BECAUSE THAT'S ALL HE KNOWS.
13 HE DON'T REALLY KNOW MOM BEING WELL.
14 ELIZABETH, SHE IS SCARED TO DEATH THAT SHE IS
15 GOING TO DIE.
16 SORRY.
17 Q. LET'S GO TO RIGHT NOW. WHAT IS THE DAY-TO-DAY
18 LIFE FOR HER NOW, TODAY, IN TERMS OF WHAT SHE CAN DO, WHAT
19 SHE CAN'T DO?
20 A. WELL, SHE IS HAVING GOOD DAYS AND BAD DAYS.
21 RIGHT NOW, SHE'S HAVING REALLY BAD DAYS.
22 Q. SHE IS UP HERE IN SAN FRANCISCO?
23 A. YES.
24 Q. SHE HAS BEEN STAYING IN A HOTEL ROOM?
25 A. YES.
26 Q. GOING BACK JUST FOR A MOMENT, HOW ABOUT TROY, THE
27 OLDEST; HOW IS TROY DEALING WITH IT?
28 A. HER DAD?
3019
1 Q. NO. I'M SORRY. YOUR SON, YOUR OLDEST SON.
2 A. HE ACTS LIKE THE STRONGEST OF THE GROUP. HE'S
3 ACTING LIKE A NORMAL -- PRETTY MUCH NORMAL 11-YEAR-OLD.
4 BUT, YOU KNOW, YOU CAN SEE LITTLE ACTING UPS.
5 EVERYTHING IS KIND OF PLUNKED ON HIM BECAUSE HE'S THE
6 OLDEST.
7 Q. OKAY.
8 A. HE'S THE ONE THAT'S GOT TO TAKE CHARGE, IT SEEMS
9 TO ME, YOU KNOW.
10 Q. NOW, JUST GENERALLY, OUTSIDE THIS COURTROOM, HOW
11 ARE YOU DEALING WITH IT?
12 A. I HAVE HAD A HELL OF A TIME WITH IT. YOU KNOW,
13 IT'S BEEN TOUGH ON ME.
14 Q. OKAY. HAS SHE BEEN -- EFFECTIVELY BEEN ABLE TO

15 TAKE CARE OF HER HOUSE AND HER CHILDREN SINCE THIS
16 DIAGNOSIS?
17 A. NO.
18 Q. SHE HAS TRIED?
19 A. YES.
20 Q. WHAT HAS SHE BEEN ABLE TO DO FROM TIME TO TIME?
21 A. WELL, SHE JUST TRIES TO DO THE NORMAL THINGS THAT
22 MAKES HER FEEL LIKE A HUMAN BEING AND A MOM AGAIN. YOU
23 KNOW, HAVE HER LIFE BACK.
24 LIKE I SAID, SHE HAS GOOD DAYS AND SHE HAS BAD
25 DAYS. EVEN ON HER BAD DAYS, SHE TRIES STRUGGLING. I SEEN
26 HER, THE WAY SHE COULD HARDLY MOVE, STILL TRY TO STRUGGLE
27 INTO THE KITCHEN. "GET OUT OF THE KITCHEN. I WILL DO THE
28 DISHES INSTEAD OF YOU."

3020

1 Q. I KNOW THIS IS A TOUGH QUESTION.
2 HOW HAS THIS IMPACTED YOUR MARRIAGE, YOUR
3 RELATIONSHIP WITH HER?
4 A. BOY, IT'S TURNED IT UPSIDE DOWN.
5 Q. IS SHE SICK MOST OF THE TIME?
6 A. YES.
7 MR. BROWN: OKAY. I THINK THAT'S ALL.
8 THANK YOU VERY MUCH.
9 THE COURT: OKAY. MS. MASON.

10

11 CROSS-EXAMINATION
12 BY MS. MASON: Q. HI, MR. WHITELEY.
13 A. HI.
14 Q. MY NAME IS LUCY MASON. YOU AND I HAVE NOT MET
15 BEFORE.
16 CAN YOU HEAR ME OKAY, SIR?
17 A. YES.
18 Q. SIR, I WANT TO START THIS AFTERNOON BY DISCUSSING
19 WITH YOU A LITTLE BIT ABOUT YOUR BACKGROUND.
20 I THINK YOU TOLD US ALREADY, SINCE ABOUT THE AGE
21 OF FOUR OR FIVE, YOU GREW UP IN VENTURA COUNTY; IS THAT
22 RIGHT?
23 A. YES.
24 Q. AND YOU HAVE LIVED IN ONE OF TWO CITIES DOWN
25 THERE; IS THAT CORRECT, SIR?
26 A. YES.
27 Q. ONE CITY IS THE CITY OF VENTURA ITSELF?
28 A. YES.

3021

1 Q. AND THE OTHER CITY IS OJAI; IS THAT RIGHT?
2 A. YES.
3 Q. AND, SIR, YOU CURRENTLY LIVE IN OJAI; IS THAT
4 RIGHT?
5 A. YES. ACTUALLY, A TOWN CALLED MEINERS OAKS. IT'S
6 A LITTLE SMALL TOWN OFF OF OJAI.
7 Q. SO YOU DON'T ACTUALLY LIVE IN THE CITY OF OJAI?
8 A. IT'S NOT IN THE CITY. IT'S IN THE COUNTY.
9 Q. BUT YOU HAVE LIVED IN VENTURA COUNTY SINCE ABOUT
10 FOUR YEARS OLD; IS THAT RIGHT?
11 A. YES.
12 Q. I THINK, SIR, YOU ALREADY TOLD US THAT YOU WENT
13 TO CABRILLO JUNIOR HIGH SCHOOL, CORRECT?
14 A. YES.
15 Q. AND YOUR WIFE LESLIE ALSO ATTENDED THAT JUNIOR
16 HIGH SCHOOL; IS THAT RIGHT?
17 A. YES.
18 Q. AND YOU REMEMBER SEEING HER IN JUNIOR HIGH, BUT
19 YOU DIDN'T KNOW HER THEN; IS THAT RIGHT?

20 A. YES.
21 Q. ALL RIGHT, SIR. I WANT TO FOCUS -- TURN OUR
22 ATTENTION FOR A MINUTE TO THE INFORMATION YOU LEARNED ABOUT
23 SMOKING WHILE YOU WERE GROWING UP.
24 ISN'T IT TRUE, SIR, THAT BY THE TIME THAT YOU
25 WERE SIX YEARS OLD, YOU HAD HEARD THAT SMOKING POSED A RISK
26 OF DISEASE; ISN'T THAT TRUE?
27 A. AT SIX?
28 Q. SIX.
3022
1 A. I DON'T KNOW. I MIGHT HAVE. SIX YEARS OLD, I
2 DON'T THINK SIX YEARS OLD YOU THINK MUCH OF ANYTHING.
3 Q. DO YOU REMEMBER, SIR, GIVING YOUR DEPOSITION IN
4 THIS CASE?
5 A. YES.
6 Q. DOWN IN OJAI?
7 A. YES.
8 Q. MR. BROWN WAS THERE?
9 A. YES.
10 Q. ALL RIGHT, SIR.
11 DO YOU REMEMBER TELLING US THEN THAT YOU LEARNED
12 WHEN YOU WERE SIX YEARS OLD THAT SMOKING --
13 MR. BROWN: YOUR HONOR, OBJECT TO THE PROCEDURE.
14 THE COURT: OKAY. IF THERE IS AN OBJECTION TO
15 THE PROCEDURE, YOU NEED TO GET THE DEPOSITION.
16 MS. MASON: YES, YOUR HONOR.
17 Q. MR. WHITELEY, I'M GOING TO HAND YOU THE
18 DEPOSITION THAT YOU GAVE IN THIS CASE, SIR.
19 THE COURT: IF YOU'VE GOT A COPY FOR ME, I'LL
20 GIVE TATSUO THE ORIGINAL BACK.
21 MS. MASON: Q. MR. WHITELEY, YOU HAD THE
22 OPPORTUNITY TO REVIEW THIS TRANSCRIPT AND MAKE ANY CHANGES
23 TO IT THAT YOU WANTED TO; ISN'T THAT RIGHT?
24 A. YES.
25 Q. ALL RIGHT, SIR. IF YOU'LL TURN WITH ME, PLEASE,
26 TO PAGE 28.
27 I PROPOSE TO READ LINE 22 THROUGH PAGE 29, LINE
28 10. DOESN'T THAT HAVE -- DO YOU SEE IT THERE, SIR?
3023
1 A. 28. AND WHAT --
2 MS. MASON: I'M ASKING THE COURT WHETHER I CAN
3 READ LINE 22 THROUGH PAGE 29, LINE 10.
4 THE COURT: LET ME JUST EXPLAIN TO MR. WHITELEY
5 WHAT WE ARE DOING.
6 COUNSEL IS PROPOSING TO READ THIS. SHE IS NOT
7 ASKING YOU ANYTHING ABOUT IT. YOU ARE FREE, THOUGH, TO
8 FOLLOW ALONG. THAT'S WHY YOU HAVE BEEN GIVEN A COPY.
9 BUT I NEED TO FIND OUT FROM MR. BROWN WHETHER HE
10 HAS ANY OBJECTION?
11 MR. BROWN: NO OBJECTION.
12 THE COURT: OKAY. YOU MAY READ.
13 MS. MASON: BEGINNING ON LINE 22.
14 "QUESTION: HOW OLD WERE YOU" --
15 THE COURT: SAY "QUESTION" AND "ANSWER," PLEASE.
16 MS. MASON: THANK YOU, YOUR HONOR. I APOLOGIZE.
17 "QUESTION: HOW OLD WERE YOU WHEN YOU FIRST
18 HEARD ANYBODY SUGGESTING THAT SMOKING MIGHT BE
19 BAD FOR YOU, SMOKING MIGHT BE HAZARDOUS OR
20 DANGEROUS TO YOUR HEALTH, SMOKING MIGHT POSE A
21 HEALTH HAZARD, ANYTHING LIKE THAT AT ALL?
22 "ANSWER: OH, I CAN'T RECALL A SPECIFIC TIME.
23 "QUESTION: OF COURSE NOT, BUT YOUR BEST
24 ESTIMATE ABOUT HOW OLD YOU WERE, PLEASE.

25 "ANSWER: OH, I WAS PROBABLY -- I WAS PROBABLY
26 YOUNG, TOO, ABOUT THE SAME AGE. I DON'T -- I
27 DON'T REMEMBER EXACTLY. I'VE HEARD BOTH PROS AND
28 CONS ON IT. I'VE HEARD PEOPLE SAY ONE THING, AND

3024

1 I'VE HEARD PEOPLE SAY THE OTHER.
2 "QUESTION: WHEN YOU SAY 'THE SAME AGE,' WHAT
3 ARE YOU TALKING ABOUT? ARE YOU TALKING ABOUT AGE
4 SIX?

5 "ANSWER: YEAH, WHEN I WAS A KID."

6 Q. DID I READ THAT CORRECTLY, MR. WHITELEY?

7 A. YES.

8 Q. OKAY. SIR, BACK WHEN YOU WERE A TEENAGER LIVING
9 IN VENTURA COUNTY, YOU ALSO SAW THE SURGEON GENERAL'S
10 WARNINGS ON PACKAGES OF CIGARETTES, DIDN'T YOU, SIR?

11 A. YES.

12 MR. BROWN: EXCUSE ME, YOUR HONOR. OBJECTION AS
13 TO TIME.

14 THE COURT: SHE JUST SAID WHEN HE WAS A
15 TEENAGER. HE HAS ALREADY TOLD US THE DATE OF HIS BIRTH. SO
16 I THINK THAT'S SUFFICIENT.

17 MR. BROWN: A SIX-YEAR STRETCH.

18 THE COURT: WELL, IF YOU WANT TO ASK ABOUT IT,
19 YOU CAN. IT'S GOOD ENOUGH FOR ME IN TERMS OF THE LAW.

20 OKAY. YOU CAN ASK THAT.

21 MS. MASON: I DIDN'T HEAR THE ANSWER. I'LL ASK
22 IT AGAIN.

23 Q. BACK, SIR, WHEN YOU WERE A TEENAGER LIVING IN
24 VENTURA COUNTY, YOU ACTUALLY SAW THE SURGEON GENERAL'S
25 WARNINGS ON PACKS OF CIGARETTES, DIDN'T YOU?

26 A. YES.

27 Q. AND YOU REMEMBER SEEING THAT SAME WARNING ON
28 BILLBOARDS; ISN'T THAT TRUE?

3025

1 A. I DON'T RECALL SPECIFICALLY SEEING IT ON
2 BILLBOARDS, BUT I'M SURE I PROBABLY.

3 Q. ON PRINT ADVERTISEMENTS; ISN'T THAT RIGHT? YOU
4 SAW THE SURGEON GENERAL'S WARNINGS ON PRINT ADVERTISEMENTS
5 WHEN YOU WERE A TEENAGER?

6 A. I PROBABLY DID.

7 Q. SIR, AND YOU UNDERSTOOD THAT SURGEON GENERAL'S
8 WARNING TO MEAN THAT THE GOVERNMENT WAS TELLING YOU THAT
9 SMOKING POSED A RISK OF SERIOUS DISEASE; ISN'T THAT TRUE?

10 MR. BROWN: OBJECTION. ARE WE STILL TALKING
11 ABOUT THE SAME TIME?

12 THE COURT: I ASSUME SO. SHE IS ASKING ABOUT
13 THE TIME HE SAW IT. THAT'S THE QUESTION.

14 MS. MASON: YOUR HONOR --

15 MR. BROWN: I THINK IT'S VAGUE AS TO WHICH
16 WARNING. THERE ARE VARIOUS WARNINGS. SHE OUGHT TO TELL THE
17 WITNESS WHICH WARNING SHE'S TALKING ABOUT.

18 THE COURT: IF HE BREAKS IT OUT, HE CAN TELL US
19 THAT AS PART OF THE ANSWER.

20 I'M GOING TO ALLOW THE QUESTION, BUT WITH THE
21 UNDERSTANDING THAT IF YOU'RE ABLE TO BE MORE SPECIFIC IN
22 TERMS OF WHICH WARNINGS OR WHICH TIME, YOU SHOULD FEEL FREE
23 TO DO IT.

24 BUT ABSENT THAT, I'LL ALLOW THE QUESTION.

25 MS. MASON: LET ME ASK IT, YOUR HONOR, A
26 DIFFERENT WAY.

27 THE COURT: OKAY.

28 MS. MASON: Q. MR. WHITELEY, THE SURGEON

3026

1 GENERAL'S WARNING THAT YOU SAW, YOU UNDERSTOOD THAT TO MEAN
2 THAT THE GOVERNMENT WAS TELLING YOU THAT SMOKING POSED A
3 RISK OF SERIOUS DISEASE; ISN'T THAT RIGHT?
4 A. YES.
5 Q. ALL RIGHT, SIR. AND WHILE YOU WERE GROWING UP IN
6 VENTURA COUNTY, YOU HEARD THAT SMOKING COULD CAUSE DISEASES
7 FROM THINGS OTHER THAN JUST THE SURGEON GENERAL'S WARNING;
8 ISN'T THAT TRUE?
9 A. REPEAT THAT, PLEASE.
10 Q. SURE. WHILE YOU WERE GROWING UP IN VENTURA
11 COUNTY, YOU HEARD THAT SMOKING POSED A RISK FOR SERIOUS
12 DISEASE FROM PLACES OTHER THAN THE SURGEON GENERAL'S
13 WARNING; ISN'T THAT TRUE?
14 A. I DON'T KNOW IF I CAN ANSWER THAT, IF IT'S TRUE.
15 YOU'RE ASKING ME IF OTHER PEOPLE. PROBABLY, YES.
16 Q. LET ME --
17 A. THAT'S A PROBABLY.
18 Q. ALL RIGHT, SIR. I DIDN'T MEAN TO INTERRUPT. I
19 APOLOGIZE. LET ME BREAK IT DOWN FOR YOU.
20 SIR, YOU REMEMBER THE AMERICAN CANCER SOCIETY
21 WHILE YOU WERE GROWING UP TELLING THE PUBLIC THAT SMOKING
22 POSED A RISK FOR SERIOUS DISEASE; ISN'T THAT RIGHT?
23 A. YES.
24 Q. IN FACT, I BELIEVE YOU TOLD US THAT YOU CAN
25 REMEMBER YOU THOUGHT EVERYBODY HAD HEARD THAT THE AMERICAN
26 CANCER SOCIETY SAID, "NO, DON'T SMOKE" WHILE YOU WERE
27 GROWING UP?
28 MR. BROWN: OBJECTION AS TO TIME.
3027
1 THE COURT: AS TO TIME. I BELIEVE YOU TOLD
2 US -- IS IT THE TIME THAT HE TOLD US?
3 MR. BROWN: NO.
4 THE COURT: IS THAT THE OBJECTION.
5 MR. BROWN: IT'S THE TIME AS TO WHAT HE TOLD
6 HER. I DON'T KNOW IF --
7 THE COURT: WHY DON'T YOU PUT THIS IN SOME TIME
8 FRAME. I'LL GIVE YOU SOME LATITUDE.
9 WE NEED TO KNOW APPROXIMATELY WHEN WE ARE TALKING
10 ABOUT.
11 MS. MASON: THANK YOU, YOUR HONOR.
12 Q. MR. WHITELEY, WHILE YOU WERE GROWING UP IN
13 VENTURA COUNTY AS A TEENAGER, YOU THOUGHT EVERYBODY HEARD
14 THE AMERICAN CANCER SOCIETY SAY, "NO, DON'T SMOKE"; ISN'T
15 THAT RIGHT?
16 A. I DON'T KNOW I COULD SAY "EVERYBODY."
17 Q. YOU DON'T RECALL?
18 A. YOU ARE PUTTING "EVERYBODY." THAT WOULD BE A NO,
19 IF THAT'S EVERYBODY.
20 Q. ALL RIGHT.
21 A. HOW CAN I ANSWER EVERYBODY?
22 Q. SIR, WHY DON'T YOU LOOK -- DO YOU HAVE YOUR
23 DEPOSITION IN FRONT OF YOU?
24 PAGE 56. I PROPOSE TO READ PAGE 56, LINE 25
25 THROUGH 57, LINE 4.
26 MR. BROWN: 67?
27 MS. MASON: 57.
28 THE COURT: 57, LINE 25 IS AN ANSWER. EXCUSE
3028
1 ME.
2 DID YOU SAY 56, LINE 25?
3 MS. MASON: I DID, YOUR HONOR.
4 THE COURT: WHAT?
5 MS. MASON: 56, LINE 24.

6 THE COURT: 24.
7 MS. MASON: THANK YOU.
8 THROUGH 57, LINE 4.
9 THE COURT: YOU WANT LINE 24? YOU WANT TO START
10 THERE WITH THAT QUESTION?
11 MS. MASON: YES, YOUR HONOR.
12 THE COURT: ALL RIGHT. LET'S SEE IF THERE IS AN
13 OBJECTION.
14 MS. MASON: I CAN START WITH LINE 16.
15 THE COURT: THERE IS NO CONTEXT TO IT. IF YOU
16 GO BACK FURTHER --
17 THE COURT: IS THERE ANY OBJECTION TO 56, LINE
18 16?
19 MR. BROWN: 16?
20 THE COURT: I THINK NOW WE ARE AT 56, LINE 16
21 THROUGH 57, LINE 4, RIGHT? THAT'S WHAT YOU WANT TO READ?
22 MS. MASON: YES, YOUR HONOR.
23 MR. BROWN: NO OBJECTION.
24 THE COURT: YOU MAY DO THAT.
25 MS. MASON: Q. DO YOU HAVE, MR. WHITELEY, PAGE
26 56 THERE IN FRONT OF YOU?
27 A. YES.
28 Q. ALL RIGHT. BEGINNING ON LINE 16.
3029
1 "QUESTION: NOW, AGAIN, IN ADDITION TO WHAT YOU
2 CALLED AND WE NOW HAVE BEEN CALLING
3 GOVERNMENT-REGULATED WARNINGS CONCERNING SMOKING
4 OR CIGARETTES, DID YOU NOT ALSO SEE AND NOTICE
5 SOME OTHER STATEMENTS MADE BY PEOPLE OR
6 ORGANIZATIONS INDICATING THAT THOSE PEOPLE OR
7 ORGANIZATIONS FELT THAT SMOKING WAS BAD FOR
8 PEOPLE OR THAT SMOKING CAUSED A HEALTH RISK FOR
9 DISEASE OR ILLNESS?
10 "ANSWER: AT ANY TIME? FROM --
11 "QUESTION: BEFORE YOUR WIFE WAS DIAGNOSED.
12 "ANSWER: BEFORE MY WIFE WAS DIAGNOSED? I'VE
13 SEEN LIKE THE AMERICAN CANCER SOCIETY.
14 "QUESTION: SURE.
15 "ANSWER: I THINK EVERYBODY HAS SEEN THEM SAYING
16 'NO, DON'T SMOKE.'"
17 DID I READ THAT CORRECTLY, MR. WHITELEY?
18 A. YES.
19 Q. ALL RIGHT, SIR.
20 AND YOU HEARD PEOPLE OTHER THAN THE AMERICAN
21 CANCER SOCIETY SAYING THAT SMOKING POSED A RISK OF SERIOUS
22 DISEASE, DIDN'T YOU, SIR, WHILE YOU WERE GROWING UP IN
23 VENTURA COUNTY?
24 A. OTHER THAN THE AMERICAN CANCER SOCIETY?
25 Q. YES.
26 A. THE SURGEON GENERAL. THAT'S THE ONES I CAN THINK
27 OF. I UNDERSTAND THAT WAS THEIR POSITION.
28 Q. SIR, DO YOU REMEMBER SEEING PUBLIC SERVICE
3030
1 ANNOUNCEMENTS FROM THE AMERICAN HEART AND LUNG ASSOCIATION?
2 A. YES.
3 MR. BROWN: OBJECTION TO TIME, PLEASE.
4 THE COURT: AS TO WHEN?
5 MS. MASON: WHILE HE WAS GROWING UP IN VENTURA
6 COUNTY.
7 THE COURT: THAT'S HOW YOU UNDERSTOOD THE
8 QUESTION?
9 THE WITNESS: THAT'S WHAT I UNDERSTOOD.
10 THE COURT: ALL RIGHT. I WILL ALLOW IT.

11 THE WITNESS: CAN I ANSWER THAT?
12 THE COURT: YES. I THINK YOU ALREADY DID.
13 THE WITNESS: YES. THAT WAS THEIR POSITION ON
14 IT. THAT WAS THEIR POSITION.
15 MS. MASON: Q. THESE PUBLIC SERVICE
16 ANNOUNCEMENTS THAT YOU SAW WHILE YOU WERE GROWING UP FROM
17 THE AMERICAN HEART AND LUNG ASSOCIATION TELLING YOU THAT
18 SMOKING CAUSED SERIOUS DISEASE, YOU THOUGHT THAT THE
19 AMERICAN HEART AND LUNG SOCIETY WAS GENUINE IN THEIR BELIEF
20 IN THOSE PUBLIC SERVICE ANNOUNCEMENTS, DIDN'T YOU, SIR?
21 A. YES. THAT WAS THEIR POSITION.
22 Q. SIR, AS A TEENAGER, WHILE YOU WERE GROWING UP IN
23 VENTURA COUNTY, YOU HEARD CIGARETTES REFERRED TO AS COFFIN
24 NAILS; ISN'T THAT RIGHT?
25 A. WE HEARD THAT.
26 Q. AND ISN'T IT ALSO TRUE, SIR, THAT WHILE YOU WERE
27 GROWING UP IN VENTURA COUNTY, YOU ALSO HEARD CIGARETTES
28 REFERRED TO AS CANCER STICKS?
3031
1 A. YES, WE HEARD THAT.
2 Q. ALL RIGHT, SIR. .
3 MR. WHITELEY, ISN'T IT TRUE THAT BY THE TIME THAT
4 YOU WERE 25 YEARS OLD, YOU HAD A CONCERN ABOUT THE POTENTIAL
5 EFFECTS THAT SMOKING WAS HAVING ON YOUR OWN HEALTH; ISN'T
6 THAT RIGHT, SIR?
7 A. WELL, I HAD A COUGH.
8 Q. AND YOU THOUGHT AS EARLY AS 25 YEARS OLD THAT
9 SMOKING WAS AFFECTING YOUR HEALTH; ISN'T THAT RIGHT, SIR?
10 A. I HAD A COUGH.
11 Q. IS THE ANSWER TO MY QUESTION YES, SIR?
12 A. I HAD A COUGH.
13 Q. DOES THAT MEAN THAT YOU THOUGHT SMOKING WAS
14 AFFECTING YOUR HEALTH?
15 A. YES, TO THE POINT OF HAVING A COUGH.
16 Q. ALL RIGHT, SIR.
17 YOU TURNED 25 YEARS OLD IN 1983; AM I RIGHT?
18 A. YEAH, I GUESS.
19 Q. YOU STARTED DATING LESLIE, YOUR WIFE, IN 1983;
20 ISN'T THAT TRUE, SIR?
21 A. YES.
22 Q. ALL RIGHT. SIR, LET'S FOCUS FOR A MINUTE, IF WE
23 CAN ABOUT SOME OF THE SMOKING RULES THAT YOU AND YOUR WIFE
24 LESLIE HAD IN YOUR HOME.
25 YOU AND YOUR WIFE HAD MADE A POLICY, HAVEN'T YOU,
26 SIR, EVER SINCE YOUR FIRST CHILD WAS BORN NOT TO SMOKE IN
27 FRONT OF THEM; ISN'T THAT RIGHT?
28 A. NO.
3032
1 Q. THAT'S NOT RIGHT; YOU HAVEN'T HAD A POLICY?
2 A. NOT TO SMOKE? WE SMOKED IN FRONT OF THEM.
3 Q. ALL RIGHT, SIR.
4 A. YOU ARE SAYING "IN FRONT OF THEM." WE GO
5 OUTSIDE.
6 Q. OKAY. YOU TRIED TO KEEP THE SMOKING AWAY FROM
7 YOUR CHILDREN; ISN'T THAT RIGHT?
8 A. TO SOME DEGREE. WE'D GO OUTSIDE MOSTLY BECAUSE
9 WE DIDN'T WANT TO GO INSIDE AND SMOKE. WE'D SMOKE OUT ON
10 THE PATIO.
11 Q. OKAY, SIR. IS IT YOUR TESTIMONY THAT YOU TRIED
12 TO NOT SMOKE AROUND YOUR CHILDREN?
13 A. YES.
14 Q. AND YOU WOULD ACCOMPLISH THAT BY SMOKING OUTSIDE?
15 A. YES.

16 Q. OKAY. AND THE REASON FOR THAT, SIR, IS BECAUSE
17 YOU DIDN'T THINK IT WAS HEALTHY FOR YOUR CHILDREN TO BREATHE
18 THE SMOKE; ISN'T THAT RIGHT?
19 A. YEAH. WE THOUGHT IT WASN'T A GOOD IDEA FOR THEM
20 TO BREATHE THE SMOKE, YES.
21 Q. YOU MAINTAINED THAT PRACTICE EVER SINCE YOUR
22 FIRST CHILD WAS BORN IN 1989; AM I RIGHT?
23 IN FACT SIR, I THINK YOU TOLD US IN YOUR
24 DEPOSITION --
25 MR. BROWN: OBJECT TO THAT PROCEDURE.
26 THE COURT: OVER AN OBJECTION, AND WE KNOW MR.
27 BROWN IS GOING TO MAKE IT, THAT FORM OF QUESTION IS NOT
28 PERMITTED.
3033
1 MS. MASON: ALL RIGHT. THANK YOU.
2 Q. MR. WHITELEY, ISN'T IT TRUE THAT YOU BELIEVE IT'S
3 JUST COMMON SENSE TO KEEP SMOKE AWAY FROM SMALL CHILDREN?
4 A. YES.
5 Q. LET'S FOCUS OUR ATTENTION ON WHAT YOUR DOCTORS
6 AND FAMILY MEMBERS HAVE SAID TO YOU ABOUT SMOKING.
7 DR. JUNG USED TO BE YOUR FAMILY PHYSICIAN; ISN'T
8 THAT TRUE?
9 A. YES.
10 Q. THAT'S J-U-N-G, RIGHT; DR. JUNG?
11 A. YES.
12 Q. SIR, HE TREATED BOTH YOU AND MRS. WHITELEY, ISN'T
13 THAT TRUE, YOUR WIFE?
14 A. YES.
15 Q. HE WAS YOUR FAMILY PHYSICIAN FOR A WHILE?
16 A. YES.
17 Q. AND DR. JUNG IS WHAT YOU CALL AN ANTI-SMOKING
18 DOCTOR; ISN'T THAT RIGHT?
19 A. YES.
20 Q. IN FACT, SIR, HE BUGGED YOU TO QUIT SMOKING JUST
21 ABOUT EVERY TIME YOU WENT TO SEE HIM; ISN'T THAT TRUE?
22 A. YES.
23 Q. ALL RIGHT, SIR. IN 1986, DR. JUNG DIAGNOSED YOU
24 WITH HIGH BLOOD PRESSURE; ISN'T THAT RIGHT?
25 A. YES, SOMETHING LIKE THAT.
26 Q. AND HE TOLD YOU TO QUIT SMOKING AT THAT TIME,
27 DIDN'T HE, SIR?
28 A. YES.
3034
1 Q. AND HE TOLD YOU THAT YOUR SMOKING WAS HAVING THE
2 EFFECT OF CAUSING YOU TO HAVE HIGH BLOOD PRESSURE; ISN'T
3 THAT RIGHT?
4 A. HE SAID IT COULD -- IF I QUIT SMOKING, IT COULD
5 COME DOWN.
6 BUT HE ALSO SAID IT WAS GENETICS TOO ON MY HIGH
7 BLOOD PRESSURE.
8 Q. AND HE TOLD YOU THAT SMOKING WAS CONTRIBUTING TO
9 THIS GENETIC PREDISPOSITION FOR HIGH BLOOD PRESSURE; ISN'T
10 THAT RIGHT?
11 A. YES.
12 Q. ALL RIGHT, SIR. THAT WAS 13 YEARS AGO THAT
13 DR. JUNG TOLD YOU THIS?
14 A. YES.
15 Q. AND YOU WENT HOME THAT NIGHT AND TOLD YOUR WIFE
16 LESLIE WHAT DR. JUNG HAD TOLD YOU; ISN'T THAT TRUE?
17 A. YES.
18 Q. AND IN FACT, LESLIE, YOUR WIFE, WASN'T SURPRISED
19 AT ALL THAT DR. JUNG HAD LINKED YOUR HIGH BLOOD PRESSURE
20 WITH SMOKING; ISN'T THAT TRUE?

21 A. I'M NOT SURE. I DON'T REMEMBER THAT OCCASION.
22 Q. YOU DON'T REMEMBER TELLING HER ABOUT THAT?
23 A. I REMEMBER TELLING HER, BUT I DON'T REMEMBER WHAT
24 HER REACTION WAS.
25 Q. WHY DON'T YOU TURN TO PAGE 109 OF YOUR
26 DEPOSITION, BEGINNING ON LINE 16, THROUGH 110, LINE 7.
27 MR. BROWN: I'M SORRY?
28 THE WITNESS: WHAT LINE?
3035
1 MS. MASON: THE NEXT PAGE, 110, LINE 7.
2 THE WITNESS: 110, LINE 7?
3 THE COURT: LINE 7 IS NOT THE END OF AN ANSWER.
4 MS. MASON: LINE 8. I'M SORRY.
5 MR. BROWN: LINE 8.
6 THE WITNESS: 109?
7 THE COURT: SHE WANTS TO READ FROM 109, LINE 16
8 TO 110, LINE 8.
9 THE QUESTION IS: IS THERE ANY OBJECTION TO IT?
10 MR. BROWN: I THINK IT OUGHT TO GO THROUGH LINE
11 11, YOUR HONOR.
12 THE COURT: ANY OBJECTION?
13 MS. MASON: NO.
14 THE COURT: ALL RIGHT. THEN WHY DON'T YOU READ
15 THROUGH LINE 11.
16 MS. MASON: ALL RIGHT.
17 Q. MR. WHITELEY, YOU HAVE PAGE 109 THERE IN FRONT OF
18 YOU?
19 A. YES.
20 Q. BEGINNING ON LINE 16.
21 "QUESTION: BUT YOU ALSO TOLD HER ABOUT WHAT THE
22 DOCTOR SUGGESTED CONCERNING QUITTING SMOKING AND
23 THE FACT THAT THAT WOULD ASSIST WITH YOUR
24 ELEVATED BLOOD PRESSURE, CORRECT?
25 "ANSWER: YEAH.
26 "QUESTION: AND WHAT WAS HER REACTION TO THAT?
27 DID SHE SAY, 'WELL, DON'T WORRY ABOUT IT, JUST
28 KEEP SMOKING'?
3036
1 "ANSWER: NO. WE'D NEVER REALLY TALK A WHOLE
2 LOT. IT WAS --
3 "QUESTION: DID --
4 "ANSWER: I THINK THAT GOES RIGHT BACK INTO THE
5 ADDICTION THING. YOU KNOW, WHEN YOU'RE ADDICTED
6 TO SOMETHING, YOU KNOW -- YOU KNOW, IT'S LIKE,
7 I'M NOT GOING TO BUG HER TO QUIT BECAUSE I KNOW
8 SHE IS HOOKED ON THE STUFF.
9 "QUESTION: DID SHE SEEM AT ALL SHOCKED OR
10 SURPRISED THAT A DOCTOR WOULD ADVISE YOU THAT
11 SMOKING WAS BAD FOR YOU, AT LEAST IN TERMS OF
12 AFFECTING YOUR HIGH BLOOD PRESSURE.
13 "ANSWER: NO, IT DIDN'T SEEM TO -- I DIDN'T
14 NOTICE ANY DIFFERENCE THERE.
15 "QUESTION: NOW --
16 "ANSWER: IT WAS SOMETHING THAT WAS CONTROLLED
17 UNDER THE MEDICATION, SO IT WAS NO --"
18 SIR, DID I READ THAT CORRECTLY?
19 A. YES.
20 Q. ALL RIGHT. AND SO, SIR, YOUR WIFE WASN'T AT ALL
21 SURPRISED WHEN YOU CAME HOME AND TOLD HER THAT DR. JUNG
22 ASKED YOU TO QUIT SMOKING TO HELP YOU CONTROL YOUR BLOOD
23 PRESSURE; ISN'T THAT RIGHT?
24 A. YES.
25 Q. AND SIR, DR. RICHARDSON IS THE DOCTOR THAT

26 DELIVERED ALL FOUR OF YOUR CHILDREN; IS THAT RIGHT?
27 A. YES.
28 Q. DR. RICHARDSON TOLD YOUR WIFE TO QUIT SMOKING
3037
1 DURING EACH PREGNANCY?
2 A. I DON'T RECALL IF HE DID OR NOT.
3 Q. YOU HAVE NOT READ HIS DEPOSITION IN THIS CASE?
4 A. NO.
5 Q. ALL RIGHT. AND YOUR OLDER SON, I THINK YOU TOLD
6 US HIS NAME IS TROY?
7 A. YES.
8 Q. TROY IS 10 YEARS OLD?
9 A. HE'S ACTUALLY 11.
10 Q. HE'S 11 NOW?
11 A. HE JUST TURNED 11.
12 Q. ALL RIGHT. AND TROY DIDN'T LIKE THE FACT THAT
13 YOU WERE SMOKING AT ALL, DID HE, SIR?
14 A. NO.
15 Q. IN FACT, TROY DIDN'T LIKE THE FACT THAT YOU WERE
16 SMOKING BECAUSE HE HAD LEARNED IN SCHOOL THAT SMOKING WAS
17 BAD FOR YOU; ISN'T THAT RIGHT?
18 A. YES. AT THAT POINT, YES.
19 Q. HE ASKED YOU TO QUIT SMOKING; ISN'T THAT TRUE,
20 SIR?
21 A. YES.
22 Q. LET'S TALK FOR A BIT, MR. WHITELEY, ABOUT YOUR
23 WIFE LESLIE.
24 YOU CONSIDER HER AN INTELLIGENT PERSON, DON'T
25 YOU, SIR?
26 A. YES.
27 Q. AND YOU CONSIDER HER TO BE AN INFORMED WOMAN
28 GENERALLY; ISN'T THAT RIGHT?
3038
1 A. YES.
2 Q. AND YOU'VE ALWAYS CONSIDERED HER TO BE A
3 STRONG-WILLED INDIVIDUAL; IS THAT RIGHT, SIR?
4 A. YES.
5 Q. AND SHE'S CERTAINLY CAPABLE OF MAKING DECISIONS
6 AND FOLLOWING THROUGH ON THEM; IS THAT RIGHT?
7 A. YES.
8 Q. ALL RIGHT, SIR.
9 YOU DISCUSSED WITH MR. BROWN BRIEFLY A MINUTE AGO
10 ABOUT SOME OF THE QUIT ATTEMPTS YOU AND MRS. WHITELEY HAD
11 MADE TO QUIT SMOKING; IS THAT RIGHT?
12 A. YES.
13 Q. I'D LIKE TO TAKE THOSE IN ORDER, SIR.
14 OTHER THAN THE ONES WHERE YOU SAID YOU TRIED TO
15 QUIT FOR AN HOUR OR SO, AS I UNDERSTAND IT, YOU YOURSELF
16 MADE THREE QUIT ATTEMPTS, THREE ATTEMPTS TO QUIT SMOKING,
17 SERIOUS ONES; IS THAT RIGHT, SIR?
18 A. YES.
19 Q. ALL RIGHT. LET'S TALK ABOUT THE FIRST OCCASION
20 WHEN YOU AND YOUR WIFE DECIDED TO QUIT SMOKING.
21 AND THAT WAS ON A CAMPING TRIP TO YOSEMITE; IS
22 THAT RIGHT, SIR?
23 A. YES.
24 Q. AND WAS TROY BORN AT THE TIME OF THIS CAMPING
25 TRIP, YOUR SON TROY?
26 A. I DON'T REMEMBER IF HE WAS OR NOT. IT WAS IN
27 THAT TIME FRAME, BUT I DON'T REMEMBER EXACTLY.
28 Q. AND HE WAS BORN IN 1989; IS THAT CORRECT, SIR?
3039
1 A. '89.

2 Q. SO IT PROBABLY WAS A LITTLE BIT BEFORE HE WAS
3 BORN?
4 A. I DON'T REMEMBER EXACTLY.
5 Q. THAT'S ALL RIGHT. OKAY.
6 AND LET'S FOCUS ON THAT QUIT ATTEMPT DURING YOUR
7 CAMPING TRIP TO YOSEMITE.
8 SIR, YOU HAD A COUGH AT THAT TIME; ISN'T THAT
9 RIGHT?
10 A. YES.
11 Q. AND SIR, ISN'T IT TRUE THAT IT WAS YOUR IDEA TO
12 QUIT SMOKING BECAUSE OF YOUR COUGH?
13 A. YES.
14 Q. ALL RIGHT. YOU ASKED YOUR WIFE LESLIE TO QUIT
15 SMOKING WITH YOU, DIDN'T YOU, SIR?
16 A. YES.
17 Q. AND SHE WANTED TO BE SUPPORTIVE OF THAT DECISION
18 TO QUIT SMOKING AND SHE DECIDED TO QUIT SMOKING AS WELL;
19 ISN'T THAT TRUE?
20 A. YES.
21 Q. AND WHAT YOU DID, YOU AND MRS. WHITELEY DID
22 DURING THIS FIRST QUIT ATTEMPT IN ORDER TO QUIT SMOKING WAS,
23 YOU GOT RID OF YOUR CIGARETTES; ISN'T THAT TRUE?
24 A. YEAH. WE JUST WE GOT IN THE CAR, TOOK OFF
25 DRIVING, WENT ON OUR CAMPING TRIP.
26 Q. LEFT YOUR CIGARETTES BEHIND?
27 A. YES.
28 Q. DID YOU ACTUALLY THROW YOUR CIGARETTES AWAY?
3040
1 A. I DON'T REMEMBER WHAT WE DID WITH THEM.
2 Q. SIR, YOU DIDN'T THROW AWAY YOUR ASHTRAYS OR GET
3 RID OF YOUR ASHTRAYS, DID YOU?
4 A. I DON'T REALLY REMEMBER.
5 Q. AND YOU DIDN'T TRY TO USE A NICOTINE PATCH DURING
6 THIS TIME PERIOD; IS THAT RIGHT?
7 A. NO. I DON'T KNOW EVEN IF THEY HAD THE PATCH AT
8 THAT POINT. THEY MIGHT HAVE, BUT I THINK IF THEY DID, IT
9 WAS THROUGH A DOCTOR. I'M NOT SURE.
10 Q. YOU DIDN'T GO TO A DOCTOR AND ASK FOR THE
11 NICOTINE PATCH; ISN'T THAT RIGHT?
12 A. NO.
13 Q. AND NEITHER DID YOUR WIFE LESLIE; IS THAT RIGHT?
14 A. YES.
15 Q. YOU DIDN'T USE NICOTINE GUM DURING THIS QUIT
16 ATTEMPT; ISN'T THAT RIGHT, SIR?
17 A. THAT'S RIGHT.
18 Q. AND NEITHER DID YOUR WIFE LESLIE?
19 A. YES.
20 Q. YOU DIDN'T SEEK ANY MEDICAL ASSISTANCE AT ALL
21 DURING THIS QUIT ATTEMPT, DID YOU, SIR?
22 A. NO.
23 Q. I'M SORRY?
24 A. NO, I DIDN'T.
25 Q. THANK YOU.
26 AND NEITHER DID YOUR WIFE LESLIE; ISN'T THAT
27 RIGHT, SIR?
28 A. YES.
3041
1 Q. YOU DIDN'T SEEK ANY COUNSELING OF ANY KIND IN
2 THIS EFFORT TO QUIT SMOKING, DID YOU, SIR?
3 A. NO.
4 Q. AND NEITHER DID YOUR WIFE LESLIE?
5 A. NO.
6 Q. AND SIR, NEITHER YOU NOR YOUR WIFE LESLIE TOLD

7 YOUR FAMILY AND FRIENDS THAT YOU WERE TRYING TO QUIT
8 SMOKING; ISN'T THAT TRUE?
9 A. YEAH. WE DIDN'T TELL ANYBODY.
10 Q. I THINK, MR. WHITELEY, YOU -- AND IF I RECALL
11 THIS CORRECTLY -- YOU AND MRS. WHITELEY LEANED ON EACH OTHER
12 DURING THIS QUIT ATTEMPT?
13 A. YES.
14 Q. SIR, DURING THIS QUIT ATTEMPT, SHE NEVER
15 COMPLAINED TO YOU ABOUT ANY PHYSICAL PROBLEMS OR SYMPTOMS,
16 DID SHE?
17 A. YEAH. SHE WAS GROUCHY. YEAH, SHE CRAVED
18 CIGARETTES.
19 Q. OTHER THAN BEING GROUCHY, SIR, SHE NEVER
20 COMPLAINED TO YOU ABOUT ANY PHYSICAL SYMPTOMS?
21 A. WELL, SHE WANTED A CIGARETTE. THAT'S FOR DARN
22 SURE. SHE WAS GROUCHY. SHE WAS EXPERIENCING ALL THOSE
23 WITHDRAWAL SYMPTOMS THAT YOU DO WHEN YOU QUIT SMOKING.
24 Q. DO YOU STILL HAVE YOUR DEPOSITION UP THERE, SIR?
25 TURN WITH ME TO PAGE 192, LINES 5 THROUGH 9.
26 MR. BROWN: WELL, I THINK THAT'S A LITTLE
27 SHORT. I THINK SHE OUGHT TO READ DOWN -- LET ME JUST SEE
28 WHERE I THINK SHE OUGHT TO GO TO.

3042

1 THE COURT: THE NEXT LINE GOES ON TO A DIFFERENT
2 SUBJECT, MR. BROWN.
3 I'M GOING TO LET HER READ THIS.
4 GO AHEAD.
5 MS. MASON: THANK YOU.
6 "QUESTION: WHAT PHYSICAL SYMPTOMS DID YOUR WIFE
7 COMPLAIN OF DURING THE TIME PERIOD WHEN SHE WAS
8 FIRST ATTEMPTING TO QUIT SMOKING?
9 "ANSWER: I DON'T KNOW IF SHE ACTUALLY
10 COMPLAINED OF ANYTHING. SHE WAS JUST BEING A
11 REGULAR GRUMP."
12 Q. WAS THAT THE ANSWER, SIR, YOU GAVE TO THAT
13 QUESTION?
14 A. YES.
15 Q. AND SIR, DURING THIS QUIT ATTEMPT THAT WE HAVE
16 BEEN TALKING ABOUT, YOU WERE ACTUALLY SUCCESSFUL LONGER IN
17 QUITTING SMOKING THAN YOUR WIFE LESLIE WAS; ISN'T THAT TRUE,
18 SIR?
19 A. YES.
20 Q. AND SIR, YOU DON'T KNOW FOR SURE WHETHER SHE
21 ACTUALLY QUIT SMOKING DURING THIS TIME PERIOD, DO YOU?
22 A. SHE DIDN'T SMOKE IN MY PRESENCE ON THE TRIP.
23 Q. YOU WOULDN'T KNOW?
24 A. SHE DIDN'T -- YES, SHE QUIT SMOKING FOR THE
25 DURATION OF THAT TRIP.
26 Q. AND YOU DON'T KNOW WHETHER SHE'D SNEAK A
27 CIGARETTE DURING THAT QUIT ATTEMPT, DO YOU, SIR?
28 A. WELL, IF SHE SNUCK A CIGARETTE, I WOULDN'T KNOW

3043

1 IT.
2 SHE DIDN'T HAVE ANY CIGARETTE SMELL ON HER, SO I
3 ASSUMED THAT SHE DIDN'T SMOKE.
4 Q. BUT SHE WAS TRYING TO BE SUPPORTIVE OF YOUR
5 ATTEMPT TO QUIT SMOKING; ISN'T THAT RIGHT, SIR?
6 A. YES.
7 Q. ALL RIGHT. BUT SHE BECAME LESS SUPPORTIVE OF
8 YOUR ATTEMPTS TO QUIT SMOKING OVER TIME, DIDN'T SHE, SIR?
9 A. THERE WAS ONLY ONE OTHER TIME.
10 Q. LET'S TALK ABOUT THAT OTHER TIME.
11 THIS WAS IN 1994, WHEN DR. JUNG TOLD YOU THAT YOU

12 WERE ON THE FAST ROAD TO EMPHYSEMA; ISN'T THAT RIGHT, SIR?
13 A. YES.
14 Q. IN FACT, THOSE WERE HIS WORDS, WEREN'T THEY?
15 A. YES.
16 Q. THE DOCTOR TOLD YOU -- DR. JUNG TOLD YOU AT THIS
17 TIME THAT SMOKING COULD CAUSE EMPHYSEMA; ISN'T THAT TRUE?
18 A. YES.
19 Q. AND WHEN YOU CAME HOME THAT NIGHT, YOU TOLD
20 LESLIE WHAT DR. JUNG HAD TOLD YOU; ISN'T THAT TRUE?
21 A. YES.
22 Q. AND LESLIE WASN'T AT ALL SURPRISED OR SHOCKED
23 THAT A DOCTOR TOLD YOU THAT SMOKING COULD CAUSE EMPHYSEMA;
24 ISN'T THAT RIGHT?
25 A. WELL, I DON'T KNOW ABOUT THAT, BUT SHE TOLD ME IF
26 I WOULD QUIT SMOKING, THAT SHE SHOULD QUIT SMOKING IF
27 DR. JUNG SAID I WAS ON THE FAST ROAD TO EMPHYSEMA.
28 Q. SHE DIDN'T SEEM SURPRISED OR SHOCKED TO LEARN,
3044
1 DID SHE, SIR, THAT A DOCTOR TOLD YOU THAT SMOKING COULD
2 CAUSE EMPHYSEMA?
3 A. SHE WAS SURPRISED THAT THAT'S WHAT THE DOCTOR
4 TOLD ME.
5 Q. ALL RIGHT, SIR. LET'S --
6 A. SHE WAS CONCERNED. I GUESS "CONCERN" WOULD BE
7 THE WORD -- THE CORRECT WORD TO USE.
8 Q. SIR, LET ME JUST MAKE SURE YOU'RE UNDERSTANDING
9 WHAT I'M ASKING YOU.
10 WHEN YOU CAME HOME THAT AFTERNOON OR THAT EVENING
11 AND TOLD LESLIE THAT DR. JUNG HAD TOLD YOU THAT SMOKING
12 CAUSES EMPHYSEMA, MY QUESTION TO YOU, SIR, IS: THAT NEWS,
13 THAT A DOCTOR HAD SAID THAT SMOKING CAUSES EMPHYSEMA, DIDN'T
14 SURPRISE YOUR WIFE AT ALL, DID IT? THAT'S MY QUESTION.
15 A. I DON'T KNOW IF I CAN ANSWER THAT.
16 SHE WAS CONCERNED. "SURPRISE" IS -- YOU KNOW,
17 SHE WAS CONCERNED. THAT'S THE WAY TO ANSWER THAT QUESTION.
18 Q. I'M SURE, SIR, SHE WAS CONCERNED ABOUT YOUR
19 HEALTH.
20 A. I MEAN, SURPRISE. I WOULD SAY NO, BECAUSE SHE
21 WASN'T SURPRISED. SHE WAS CONCERNED.
22 Q. JUST SO WE ARE UNDERSTANDING EACH OTHER, YOUR
23 WIFE LESLIE WAS NOT SURPRISED THAT YOU LEARNED FROM A DOCTOR
24 THAT SMOKING COULD CAUSE EMPHYSEMA; IS THAT RIGHT?
25 A. SHE WAS CONCERNED HEARING THAT NEWS.
26 Q. ALL RIGHT, SIR.
27 WILL YOU TURN WITH ME --
28 A. WHEN YOU SAY "SURPRISED," IT SOUNDS LIKE -- TO
3045
1 ME, YOU SOUND LIKE YOU'RE TRYING TO SAY SHE ALREADY THOUGHT
2 I WAS GOING TO HAVE EMPHYSEMA.
3 THAT'S NOT THE CASE. SHE WAS SURPRISED THAT THE
4 DOCTOR TOLD ME THAT.
5 Q. SHE WAS SURPRISED THAT YOU, IN FACT, HAD
6 EMPHYSEMA?
7 A. I DON'T HAVE EMPHYSEMA.
8 Q. YOU WERE ON THE FAST ROAD TO EMPHYSEMA; THAT WAS
9 NOT SOMETHING SHE --
10 A. SHE WAS CONCERNED. SHE WAS CONCERNED AND WORRIED
11 ABOUT THAT.
12 Q. CORRECT, SIR. BUT MY QUESTION, SIR, IS REALLY A
13 LITTLE BIT DIFFERENT.
14 MY QUESTION TO YOU IS: THE FACT THAT A DOCTOR
15 HAD SAID SMOKING CAUSES EMPHYSEMA WAS NOT SOMETHING THAT WAS
16 SURPRISING TO YOUR WIFE IN 1994; ISN'T THAT TRUE?

17 A. WELL, LIKE I SAID, SHE WAS SURPRISED. SHE WAS
18 CONCERNED THAT THE DOCTOR TOLD ME THAT.
19 Q. ALL RIGHT. LET'S TURN TO PAGE 112 OF YOUR
20 DEPOSITION, MR. WHITELEY.
21 I PROPOSE TO READ LINES 13 THROUGH 16.
22 A. 112?
23 Q. 112.
24 THE COURT: ANY OBJECTION?
25 MR. BROWN: I MIGHT. I HAVEN'T FOUND IT YET.
26 WHAT LINES?
27 THE COURT: 13 TO 16.
28 MR. BROWN: WHAT WAS IT? 13 TO WHAT?
3046
1 MS. CHABER: 16.
2 THE COURT: ANY OBJECTION?
3 MR. BROWN: NO, YOUR HONOR.
4 THE COURT: THREE LINES. NO OBJECTION?
5 MR. BROWN: NO OBJECTION.
6 THE COURT: OKAY. YOU MAY READ.
7 MS. MASON: "QUESTION: DID SHE SEEM SHOCKED OR
8 SURPRISED THAT A DOCTOR WOULD TELL YOU THAT
9 SMOKING WAS CAUSING OR CONTRIBUTING TO A
10 SITUATION THAT MIGHT LEAD TO EMPHYSEMA?
11 "ANSWER: NO."
12 Q. SIR, THAT'S THE ANSWER YOU GAVE TO THAT QUESTION?
13 A. YES. THAT'S THE ANSWER I GAVE TO THAT QUESTION.
14 Q. ALL RIGHT, SIR.
15 IN FACT, SHE AGREED WITH DR. JUNG AT THIS TIME,
16 DIDN'T SHE, SIR, AND TOLD YOU THAT SHE THOUGHT YOU OUGHT TO
17 QUIT SMOKING?
18 A. YES.
19 Q. IN FACT, SHE WENT SO FAR AS TO TELL YOU, IF A
20 DOCTOR HAD TOLD HER THAT, HAD TOLD HER THAT SHE HAD
21 EMPHYSEMA, SHE WOULD QUIT SMOKING; ISN'T THAT TRUE?
22 A. YES.
23 Q. AND YOU ASKED LESLIE TO QUIT SMOKING WITH YOU;
24 ISN'T THAT TRUE, SIR?
25 A. YES.
26 Q. AND SHE TOLD YOU THAT YOU WERE THE ONE WITH THE
27 COUGH, SHE DIDN'T HAVE A PROBLEM, SO SHE WASN'T GOING TO
28 QUIT; IS THAT RIGHT?
3047
1 A. SHE TOLD ME THAT SHE SMOKED LIGHT CIGARETTES,
2 THAT SHE WAS IN GOOD HEALTH, SHE -- YOU KNOW, SHE HAD -- SHE
3 LOOKED REALLY GOOD. SHE ATE VEGETABLES AND THAT SHE HAD LOW
4 BLOOD PRESSURE, THAT THE DOCTOR HAD TOLD HER SHE HAD LOW
5 BLOOD PRESSURE. SHE DIDN'T HAVE A PROBLEM.
6 Q. SIR, WHY DON'T YOU TURN WITH ME TO PAGE 120 OF
7 YOUR DEPOSITION, LINES 15 THROUGH 23. I GUESS WE BETTER
8 START AT 13.
9 I PROPOSE TO READ PAGE 120, LINE 13 THROUGH PAGE
10 121, LINE 1. OR LINE 3. I'M SORRY.
11 DO YOU WANT ME TO DO THAT AGAIN? I APOLOGIZE.
12 PAGE 120, LINE 13 TO 121, LINE 3.
13 MR. BROWN: I THINK, FOR CONTEXT, YOU HAVE TO GO
14 BACK BEFORE THAT.
15 MS. MASON: I CAN START AT LINE 15.
16 THE COURT: HE WANTS YOU TO GO BACK FURTHER, NOT
17 LATER.
18 MR. BROWN: I THINK YOU OUGHT TO GO BACK. TO
19 PUT THIS IN CONTEXT, GO BACK TO THE LAST PAGE.
20 THE COURT: I'M NOT GOING TO DO THAT.
21 YOU GO AHEAD. READ WHAT YOU PROPOSE TO READ.

22 MS. MASON: THANK YOU, YOUR HONOR.
23 "QUESTION: -- HAVE A BACK-AND-FORTH DISCUSSION
24 ABOUT IT. OKAY.
25 "NEVERTHELESS, THERE WAS A TIME, WAS THERE NOT,
26 WHEN YOU SUGGESTED TO LESLIE THAT YOU AND SHE
27 OUGHT TO QUIT SMOKING?
28 "ANSWER: SUGGESTED THAT I SHOULD QUIT SMOKING.
3048
1 I SUGGESTED THAT I WISHED SHE WOULD QUIT WITH
2 ME. THAT WOULD HELP ME QUIT SMOKING.
3 "QUESTION: WHEN WAS THAT?
4 "ANSWER: IT WAS ABOUT THE TIME THAT DR. JUNG
5 TOLD ME THAT I WAS GOING TO -- I WAS ON A FAST
6 ROAD TO EMPHYSEMA.
7 "QUESTION: WHAT WAS HER REACTION TO YOUR
8 SUGGESTION?
9 "ANSWER: HER REACTION WAS THAT SHE DIDN'T HAVE
10 A PROBLEM, THAT I WAS THE ONE WITH THE COUGH.
11 "QUESTION: AND WHAT ELSE WAS SAID BY EITHER OF
12 YOU?
13 "ANSWER: I THINK WE JUST KIND OF LEFT IT AT
14 THAT."
15 Q. SIR, DID I READ THAT CORRECTLY?
16 A. YES.
17 Q. ALL RIGHT. SO YOU MADE A SECOND ATTEMPT TO QUIT
18 SMOKING AT THIS TIME, DIDN'T YOU, SIR, IN 1994, AFTER --
19 A. YEAH. YEAH. YES. THIS TIME THAT WE ARE TALKING
20 ABOUT, YES.
21 Q. YES, SIR.
22 YOU DECIDED LESLIE DIDN'T WANT TO STOP, BUT YOU
23 WANTED TO, SO YOU TRIED TO QUIT ON YOUR OWN; ISN'T THAT
24 TRUE?
25 A. YES. YES.
26 Q. ALL RIGHT, SIR.
27 A. WHAT I SAID EARLIER, THAT WAS PART OF THE
28 CONVERSATION. I JUST DIDN'T GET THAT INTO THE DEPOSITION
3049
1 HERE.
2 Q. OKAY.
3 A. SO --
4 Q. AND IN THIS QUIT ATTEMPT, SIR, YOU GOT RID OF
5 YOUR CIGARETTES AGAIN; ISN'T THAT RIGHT?
6 A. YES.
7 Q. AND LESLIE WANTED TO SUPPORT YOU DURING THIS QUIT
8 ATTEMPT, BUT SHE CONTINUED TO SMOKE HERSELF; ISN'T THAT
9 TRUE?
10 A. YES.
11 Q. AND SHE WOULD SMOKE IN YOUR PRESENCE; ISN'T THAT
12 TRUE?
13 A. WELL, SHE TRIED TO GO OUTSIDE. YOU KNOW, SHE'D
14 TRY. SHE WASN'T FLAUNTING IT IN FRONT OF ME. SHE'D WAIT
15 UNTIL I WAS OUT OF HER PRESENCE.
16 Q. SHE MAY NOT HAVE FLAUNTED IT IN FRONT OF YOU, BUT
17 SHE CONTINUED TO SMOKE IN YOUR PRESENCE DURING THIS TIME
18 PERIOD; CORRECT?
19 A. YES.
20 Q. ALL RIGHT, SIR.
21 YOU WERE NOT SUCCESSFUL IN THAT QUIT ATTEMPT,
22 WERE YOU, SIR?
23 A. NO.
24 Q. THERE'S A THIRD TIME THAT YOU TRIED TO QUIT
25 SMOKING --
26 A. YES.

27 Q. -- YOU AND YOUR WIFE? OKAY, SIR.
28 UP UNTIL THIS -- WELL, LET'S DO IT THIS WAY:
3050
1 YOUR WIFE ENJOYED SMOKING, DIDN'T SHE, SIR?
2 A. YES.
3 Q. ALL RIGHT. OTHER THAN THE TIME IN YOSEMITE THAT
4 WE TALKED ABOUT, THIS FINAL QUIT ATTEMPT THAT YOU AND I ARE
5 GOING TO TALK ABOUT IN A MINUTE, SHE DIDN'T TELL YOU AT ANY
6 OTHER TIME THAT SHE HAD A PERSISTENT DESIRE TO QUIT SMOKING;
7 ISN'T THAT TRUE?
8 A. YES.
9 Q. ALL RIGHT, SIR. LET'S TURN TO THIS FINAL QUIT
10 ATTEMPT.
11 I THINK YOU AND MR. BROWN DISCUSSED IT BRIEFLY.
12 THIS HAPPENED IN 1998, IN FEBRUARY; IS THAT CORRECT?
13 A. YES.
14 Q. YOUR WIFE HAD BEEN DIAGNOSED WITH CHRONIC
15 BRONCHITIS; IS THAT TRUE?
16 A. YES.
17 Q. AND WHEN SHE CAME HOME FROM THE DOCTOR'S
18 APPOINTMENT WHERE SHE HAD BEEN WITH THE CHRONIC BRONCHITIS
19 DIAGNOSIS, SHE TOLD YOU HOW TERRIBLY PAINFUL THIS EPISODE
20 WAS FOR HER; IS THAT RIGHT?
21 A. YES.
22 Q. SHE TOLD YOU THAT THIS DOCTOR TOLD HER THAT SHE
23 OUGHT TO QUIT SMOKING; ISN'T THAT RIGHT?
24 A. YES.
25 Q. SHE TOLD YOU THAT THE DOCTOR SAID IF SHE
26 CONTINUED TO SMOKE, HER BRONCHITIS WOULD ONLY GET WORSE?
27 A. YES.
28 Q. ALL RIGHT, SIR. AND SHE ASKED YOU TO HELP HER
3051
1 AND QUIT SMOKING AT THAT TIME; RIGHT?
2 A. YES.
3 Q. YOU TOLD HER YOU WOULD, SIR; ISN'T THAT RIGHT?
4 A. YES.
5 Q. IN FACT, YOU WERE BOTH SUCCESSFUL IN QUITTING
6 SMOKING; ISN'T THAT TRUE?
7 A. YES.
8 Q. AND SIR, YOU HAD A MORE DIFFICULT TIME QUITTING
9 THAN YOUR WIFE LESLIE DID; ISN'T THAT TRUE?
10 A. I DON'T KNOW. I DON'T KNOW IF YOU COULD PUT IT
11 THAT WAY. WE BOTH HAD DIFFICULTY. SHE COULDN'T SMOKE THEM
12 ANY MORE. HER LUNGS HURT.
13 Q. SHE QUIT SMOKING COLD TURKEY; IS THAT RIGHT?
14 A. YES.
15 Q. YOU, SIR, HAD TO USE THE NICOTINE PATCH; ISN'T
16 THAT RIGHT?
17 A. YES.
18 Q. IN FACT, YOUR WIFE LESLIE HAD A PRESCRIPTION FOR
19 THE NICOTINE PATCH, BUT JUST CHOSE NOT TO USE IT; ISN'T THAT
20 RIGHT?
21 A. I DON'T REMEMBER IF SHE HAD A PRESCRIPTION OR
22 NOT.
23 Q. YOU JUST DON'T REMEMBER?
24 A. I DON'T REMEMBER.
25 Q. OKAY, SIR.
26 MR. WHITELEY, PRIOR TO YOUR WIFE AND YOU FILING
27 THIS LAWSUIT, SHE NEVER TOLD YOU THAT SHE WAS ADDICTED TO
28 CIGARETTES, DID SHE?
3052
1 A. I CAN'T PRECISELY SAY IF SHE DID OR NOT. SHE
2 PROBABLY DID, BUT I DON'T KNOW. I CAN'T ANSWER THAT --

3 Q. ALL RIGHT. LET'S TURN --
4 A. -- BECAUSE I DON'T HAVE A RECOLLECTION.
5 Q. LET'S TURN TO 189 OF YOUR DEPOSITION, LINE 22
6 THROUGH 190, LINE 1.
7 A. 189, WHAT?
8 Q. 189, LINE 22 THROUGH 190, LINE 1.
9 MR. BROWN: NO OBJECTION. I'M SORRY.
10 THE COURT: YOU MAY READ.
11 MS. MASON: "QUESTION: HAS YOUR WIFE EVER TOLD
12 YOU THAT SHE THOUGHT SHE WAS ADDICTED TO
13 CIGARETTES?
14 "ANSWER: NO, I DON'T RECALL HER EVER SAYING
15 THAT. SHE MIGHT HAVE SAID IT, BUT I DON'T
16 SPECIFICALLY RECALL HER EVER SAYING THAT."
17 Q. DID I READ THAT CORRECTLY, SIR?
18 A. YES.
19 Q. ALL RIGHT. SIR, LET'S TALK FOR A MINUTE ABOUT
20 THE BRANDS OF CIGARETTES YOUR WIFE SMOKED.
21 NOW, I THINK WE'VE ALREADY ESTABLISHED THAT YOU
22 MET HER IN 1983; IS THAT RIGHT?
23 A. YES.
24 Q. AND AT THE TIME YOU MET HER, SIR, SHE WAS SMOKING
25 CAMEL LIGHT 100S; ISN'T THAT RIGHT?
26 A. I THINK SHE WAS SMOKING -- WHEN WE FIRST MET, SHE
27 WAS SMOKING THE SHORTS OR CAMEL LIGHTS 100S. CAMEL LIGHTS,
28 NOT THE CAMEL LIGHTS 100S.

3053

1 Q. ALL RIGHT, SIR. LET'S LOOK AT PAGE 78 OF THE
2 DEPOSITION. MAYBE THAT WILL HELP REFRESH YOUR MEMORY.
3 A. I'M JUST TELLING YOU WHAT I RECALL RIGHT NOW. I
4 REMEMBER SHE WAS SMOKING LIGHTS.
5 Q. OKAY. PAGE 78, LINE 5 THROUGH LINE 23.
6 A. 88?
7 Q. 78.
8 MR. BROWN: NO OBJECTION.
9 THE COURT: OKAY. YOU MAY READ.
10 MS. MASON: Q. PAGE 78, SIR.
11 A. 78 WHAT?
12 Q. LINE 5.
13 DO YOU HAVE IT THERE?
14 A. YES.
15 Q. "QUESTION: WHEN YOU BECAME REACQUAINTED WITH
16 LESLIE AT OXNARD JUNIOR COLLEGE, DID YOU
17 RECOGNIZE RIGHT AWAY THAT SHE WAS SOMEONE WHO
18 SMOKED?
19 "ANSWER: YEAH.
20 "QUESTION: AND WHAT BRAND WAS SHE SMOKING AT
21 THE TIME?
22 "ANSWER: I THINK SHE WAS SMOKING CAMEL LIGHTS,
23 CAMEL LIGHT 100S.
24 "QUESTION: JUST SO THE RECORD IS CLEAR, YOU
25 MENTIONED CAMEL LIGHTS, AND THEN YOU SAID CAMEL
26 LIGHT 100S.
27 THEY ARE TWO DIFFERENT TYPES OF CIGARETTES,
28 CORRECT?

3054

1 "ANSWER: BUT THEY'RE SO CLOSE TOGETHER,
2 THEY'RE, YOU KNOW, ONE AND THE SAME. ONE'S A
3 LITTLE LONGER THAN THE OTHER.
4 "QUESTION: RIGHT. BUT THEY COME IN DIFFERENT
5 PACKAGES?
6 "ANSWER: YES, SIR.
7 "QUESTION: SO DO YOU REMEMBER WHICH ONE SHE WAS

8 SMOKING?
9 "ANSWER: I THINK SHE WAS SMOKING THE 100S.
10 "QUESTION: THE CAMEL LIGHT 100S?
11 "ANSWER: CAMEL LIGHT 100S."
12 DID I READ THAT RIGHT, SIR?
13 A. YES.
14 Q. OKAY. AND SO ISN'T IT TRUE THAT YOUR WIFE TOLD
15 YOU THAT SHE SMOKED CAMEL LIGHT 100S BECAUSE SHE HAD TRIED
16 THEM AND LIKED THEM?
17 A. YEAH. I DON'T HAVE AN EXACT RECOLLECTION THERE
18 EXACTLY.
19 SOMEHOW, I'M REMEMBERING THE LIGHTS AND LIGHT
20 100S TOO. MAYBE AT THAT TIME SHE WAS SMOKING
21 BOTH OF THEM. THAT'S WHAT I WAS REFERRING TO THERE.
22 I KNOW SHE SAID SHE LIKED THE CAMEL LIGHTS,
23 BECAUSE SHE LIKED THE TASTE OF THEM.
24 Q. SIR, DIDN'T SHE TELL YOU THAT SOMEONE OFFERED HER
25 A CAMEL LIGHT 100, SHE TRIED IT, SHE LIKED THE FLAVOR BETTER
26 THAN A MARLBORO, SO SHE STARTED SMOKING --
27 A. YES.
28 Q. LET ME FINISH, PLEASE. THAT'S OKAY.
3055
1 -- CAMEL LIGHT 100S; ISN'T THAT RIGHT?
2 A. YES.
3 Q. OKAY, SIR. SHE NEVER SAID TO YOU THAT SHE
4 THOUGHT A LIGHT CIGARETTE WAS HEALTHIER THAN A FULL-FLAVORED
5 CIGARETTE; ISN'T THAT TRUE?
6 A. NO, THAT ISN'T TRUE. SHE DID SAY THAT. SHE DID
7 SAY THAT WHEN I HAD EMPHYSEMA --
8 Q. SIR, LET'S --
9 A. -- OR WHEN THAT ATTEMPT WAS.
10 Q. PAGE 224 OF YOUR DEPOSITION.
11 A. 224?
12 Q. 224. LINE 2 THROUGH LINE 13.
13 MR. BROWN: YOU MEAN TO 15? WHERE?
14 MS. MASON: NO, 13.
15 MR. BROWN: 13. OKAY.
16 THE COURT: I TAKE IT "OKAY" MEANS NO
17 OBJECTION?
18 MR. BROWN: NO OBJECTION.
19 THE COURT: YOU CAN GO AHEAD.
20 MS. MASON: PAGE 224.
21 "QUESTION: SHE NEVER INDICATED TO YOU THAT SHE
22 CONSIDERED THE LIGHT CIGARETTES TO BE SAFER THAN
23 THE FULL-FLAVOR CIGARETTES?
24 "ANSWER: I DON'T RECALL HER EVER SAYING
25 ANYTHING LIKE THAT.
26 "QUESTION: DID YOU EVER DISCUSS WITH HER ANY
27 RELATIVE HEALTH BENEFITS OF SMOKING LIGHT
28 CIGARETTES AS OPPOSED TO FULL-FLAVOR CIGARETTES?
3056
1 "ANSWER: I DON'T RECALL HER EVER SAYING
2 ANYTHING LIKE THAT.
3 "QUESTION: DID YOU EVER SAY ANYTHING TO HER
4 ABOUT THAT?
5 "ANSWER: NO."
6 Q. SIR, WERE THOSE THE ANSWERS YOU GAVE TO THOSE
7 QUESTIONS?
8 A. YES, BUT I THOUGHT -- AT THE TIME I ANSWERED
9 THAT, I THOUGHT I WAS REFERRING TO AN EARLIER TIME THAN WHAT
10 I REFERRED TO EARLIER ABOUT THE EMPHYSEMA.
11 Q. SIR, THE QUESTION HERE WAS: DID SHE EVER SAY
12 THAT TO YOU?

13 A. YES. I KNOW THAT. I MUST HAVE MISSPOKE OR
14 MISUNDERSTOOD THIS QUESTION.
15 Q. OKAY. SIR, I JUST WANT TO MAKE SURE I UNDERSTOOD
16 THIS CORRECTLY.
17 DID YOU SAY ON DIRECT THAT YOU HAD HEARD OR READ
18 ARTICLES FROM TOBACCO COMPANIES SAYING THAT CIGARETTE
19 SMOKING WAS SAFE? IS THAT WHAT YOU SAID, SIR?
20 A. I HEARD -- I HAVE HEARD THE TOBACCO COMPANIES SAY
21 BOTH. YOU KNOW, I HAVE HEARD -- I'VE HEARD -- I HEARD IT ON
22 TELEVISION. A GOOD EXAMPLE IS WHEN YOU TESTIFIED IN FRONT
23 OF CONGRESS.
24 Q. SIR, DID YOU SAY THAT YOU HAD HEARD TOBACCO
25 COMPANIES IN ARTICLES SAY THAT CIGARETTE SMOKING WAS SAFE;
26 WAS THAT YOUR TESTIMONY, THAT YOU HAD ACTUALLY HEARD THAT
27 THAT THE COMPANIES ACTUALLY SAID THAT CIGARETTE SMOKING WAS
28 SAFE?
3057
1 A. HAVEN'T THEY ALWAYS SAID THAT?
2 Q. I'M ASKING YOU, SIR, IF THAT WAS YOUR TESTIMONY,
3 IF I UNDERSTOOD IT CORRECTLY?
4 A. YES, THAT WAS MY TESTIMONY.
5 Q. ALL RIGHT, SIR. LET'S LOOK AT YOUR DEPOSITION.
6 PAGE 165, LINES 13 THROUGH 21.
7 A. 13 THROUGH 21.
8 MR. BROWN: I'M OBJECTING TO IT ON 352. IT'S
9 NOT WHAT THE CONVERSATION IS HERE.
10 THE COURT: I THINK THAT'S FOR THE JURY TO
11 DECIDE. I'M GOING TO OVERRULE.
12 I HAVE DONE THE WEIGHING. I'M GOING TO ALLOW THE
13 READING.
14 MR. BROWN: ALL RIGHT.
15 MS. MASON: "QUESTION: BUT MY QUESTION TO YOU
16 IS THIS: HAVE YOU EVER SEEN AN ADVERTISEMENT OR
17 ANY OTHER COMMUNICATION FROM A TOBACCO COMPANY
18 THAT SAID TO YOU IN SO MANY WORDS THAT CIGARETTE
19 SMOKING WAS SAFE?
20 "ANSWER: I THOUGHT I JUST ANSWERED THAT. I --
21 SPECIFICALLY, NO, I CAN'T."
22 Q. DID I READ THAT CORRECTLY, MR. WHITELEY?
23 A. YES.
24 Q. ALL RIGHT, SIR. ISN'T IT TRUE THAT YOU HEARD
25 TIME AFTER TIME AFTER TIME THAT SMOKING COULD CAUSE LUNG
26 CANCER?
27 A. FROM THE DIFFERENT -- FROM THE TOBACCO COMPANIES
28 OR FROM WHO?
3058
1 Q. ANYWHERE.
2 A. YES. WE HEARD -- I HEARD PROS AND CONS OF BOTH.
3 Q. HAVEN'T YOU HEARD, SIR, THE MESSAGE TIME AFTER
4 TIME AFTER TIME THAT SMOKING CAUSES LUNG CANCER?
5 A. I HEARD THAT.
6 MS. MASON: OKAY. THANK YOU, SIR. I HAVE
7 NOTHING ELSE.
8 THE COURT: OKAY. MR. BROWN.
9 MR. FURR: NO QUESTIONS.
10 I APOLOGIZE.
11 THE COURT: THAT WAS ACTUALLY MY FAULT. I
12 DIDN'T ASK YOU WHETHER YOU HAD ANY QUESTIONS. I JUST
13 ASSUMED THAT. THAT WAS MY FAULT.
14 MR. BROWN: WITH REFERENCE TO THIS LAST BIT OF
15 DEPOSITION THAT WAS READ FOR THE RECORD, I THINK THAT WAS
16 READ, 165 LINES 13 THROUGH 21. I'D LIKE TO READ FROM PAGE
17 164, LINE 7 THROUGH LINE 24.

18 MS. MASON: I DO HAVE AN OBJECTION, YOUR HONOR.
19 I THINK HE OUGHT TO ASK THE WITNESS A QUESTION.
20 MR. BROWN: WHEN YOU READ FROM A DEPOSITION --
21 THE COURT: HOLD ON. I THINK I KNOW THE LAW IN
22 THIS AREA.
23 IF THAT'S YOUR OBJECTION, IT'S OVERRULED.
24 MR. BROWN: ALL RIGHT.

25
26 REDIRECT EXAMINATION

27 MR. BROWN: "QUESTION: AT ANY TIME" --
28 MS. MASON: YOUR HONOR, CAN WE HAVE A SIDEBAR,

3059

1 PLEASE?
2 THE COURT: YES.
3 (COURT AND COUNSEL CONFER OUTSIDE
4 THE PRESENCE OF THE JURY)
5 THE COURT: OKAY. AFTER A SIDEBAR, YOU ARE
6 GOING TO CHANGE THE PARAMETERS OF THE READING, AND I THINK
7 WITH THAT, THERE'S NO OBJECTION.
8 LET'S SEE. IS THAT ALL RIGHT?
9 MS. MASON: THAT'S RIGHT.
10 THE COURT: GO AHEAD.
11 MR. BROWN: I'M GOING TO READ FROM PAGE 163, 23
12 THROUGH 164, LINE 24.
13 THE COURT: ANY OBJECTION?
14 MS. MASON: NO, THAT'S FINE.
15 THE COURT: YOU MAY READ.
16 MR. BROWN: "QUESTION: CAN YOU THINK OF ANY
17 SPECIFIC EXAMPLE OF SOMEONE TELLING YOU THAT
18 SMOKING CIGARETTES WAS SAFE?
19 "ANSWER: I CAN'T THINK OF SPECIFICALLY ANYONE.
20 I JUST REMEMBER CONSTANTLY THE TOBACCO COMPANIES
21 TELLING US THAT THEY WERE SAFE.
22 "QUESTION: CAN YOU REMEMBER ANY SPECIFIC
23 EXAMPLE OF A TOBACCO COMPANY TELLING YOU THAT
24 CIGARETTE SMOKING WAS SAFE?
25 "ANSWER: OUTSIDE OF WHAT, BACK WHEN I WAS IN --
26 WHEN I WAS A TEENAGER?
27 "QUESTION: AT ANY TIME. CAN YOU REMEMBER ANY
28 SPECIFIC INSTANCE OF A TOBACCO COMPANY TELLING

3060

1 YOU THAT CIGARETTE SMOKING WAS SAFE?
2 "ANSWER: I JUST -- I JUST REMEMBER HEARING
3 STUFF ON THE NEWS. I COULDN'T BE PRECISE ON A
4 SPECIFIC -- YOU WANT A SPECIFIC. I CAN'T TELL
5 YOU A SPECIFIC. I CAN TELL YOU THAT I HEARD, ALL
6 THE TIME, PROS AND CONS, THE TOBACCO SAYING ONE
7 THING AND OTHER PEOPLE SAYING THE OTHER.
8 PRESUMING THE GOVERNMENT.
9 "QUESTION: WHAT'S THE ONE THING, THAT
10 CIGARETTES WERE SAFE?
11 "ANSWER: YEAH. I JUST REMEMBER -- I JUST
12 REMEMBER PEOPLE IN GENERAL, OTHER PUBLIC, THE
13 NEWSPAPERS, TV, RADIO, TALK SHOW HOSTS. I
14 COULDN'T TELL YOU WHERE I EXACTLY HEARD THEM
15 TALKING ABOUT IT, BUT THAT WAS THE THING -- YOU
16 KNOW, AND BILLBOARDS, THOSE KIND OF THINGS WHERE
17 IT'S LIKE -- YOU KNOW, IT'S A HEALTHY -- IT'S
18 ALWAYS BEEN PROMOTED AS A HEALTHY PRODUCT."
19 JUST ONE OTHER QUESTION.

20 Q. AT ANY TIME DURING THE TIME THAT YOU WERE -- THAT
21 YOU KNEW LESLIE WHITELEY, ESPECIALLY SINCE YOU WERE MARRIED
22 TO HER, AND COMING DOWN INTO THE '90S AND UP UNTIL '94, WHEN

23 THE DOCTOR HAD TOLD YOU ABOUT THIS FAST-TRACK TO EMPHYSEMA,
24 DID YOU EVER HAVE ANY HINT THAT PEOPLE WHO SMOKED CIGARETTES
25 HAD A ONE-IN-TWO CHANCE OF DYING FROM A SMOKING ILLNESS?
26 A. NO.
27 MR. BROWN: THAT'S ALL I HAVE.
28 THE COURT: ANYTHING FURTHER BY ANYBODY FOR MR.
3061
1 WHITELEY?
2 MS. MASON: NO, YOUR HONOR. THANK YOU.
3 THE COURT: OKAY. YOU MAY STEP DOWN.
4 (WITNESS EXCUSED)
5 LET'S TAKE OUR AFTERNOON RECESS.
6 JURORS, I NEED TO STOP AROUND 4:30 OR SOON
7 THEREAFTER TODAY.
8 SO LET'S TAKE A 20-MINUTE RECESS TILL 3:15.
9 JURORS, PLEASE CONTINUE TO FOLLOW THE
10 ADMONITION. WE'LL SEE YOU BACK AT 3:15
11 (RECESS TAKEN FROM 2:55 TO 3:20 P.M.)
12 THE COURT: WE ARE BACK ON THE RECORD.
13 WHAT IS NEXT?
14 MR. BROWN: YOUR HONOR, WE HAVE ENTERED INTO A
15 STIPULATION WHICH WE DISCUSSED IN CHAMBERS.
16 (ATTORNEYS CONFER)
17 MR. BROWN: THE GOOD NEWS, THIS STIPULATION
18 ELIMINATES THE NEXT WITNESS AND ABOUT 40 MINUTES OF
19 TESTIMONY.
20 THE COURT: OKAY.
21 I BETTER GIVE YOU A COUPLE OF MINUTES TO WORK IT
22 OUT.
23 MR. BROWN: IT'S A GOOD TRADE.
24 (ATTORNEYS CONFER)
25 THE COURT: I TOLD THE JURY AT THE BEGINNING OF
26 THE CASE WHAT A STIPULATION WAS, SO WHEN YOU'RE READY TO
27 READ IT INTO THE RECORD, YOU FEEL FREE TO DO IT.
28 MR. BROWN: THERE AREN'T ENOUGH LAWYERS TO
3062
1 UNDERSTAND WHAT THE EXPERT WAS GOING TO SAY.
2 THE COURT: LET ME JUST TELL THE JURY WHAT'S
3 GOING ON. YOU TELL ME IF I HAVE THIS RIGHT OR NOT. INSTEAD
4 OF CALLING A WITNESS TO GIVE CERTAIN TESTIMONY, YOU'RE ALL
5 GOING TO STIPULATE -- IN THE INTEREST OF EFFICIENCY AND TIME
6 AND SO FORTH, THAT YOU ARE GOING TO STIPULATE AS TO WHAT
7 THIS WITNESS WOULD HAVE TESTIFIED, IF THIS WITNESS HAD BEEN
8 CALLED AS A WITNESS, AND IT SHOULD BE DEEMED THAT THAT
9 WITNESS WAS CALLED AND GAVE THAT TESTIMONY.
10 IS THAT CORRECT?
11 MR. HARDY: THAT'S CORRECT, YOUR HONOR.
12 THE COURT: OKAY.
13 MR. BROWN: THAT, PLUS JUST PERHAPS NOT A VERY
14 SIGNIFICANT ITEM. OKAY.
15 THAT, PLUS THAT THE DEFENDANTS ARE NOT OFFERING
16 ANY EVIDENCE IN CONTRADICTION.
17 THE COURT: WHY DON'T YOU DO THIS: WHATEVER THE
18 STIPULATION IS, WHY DON'T YOU STATE IT FROM START TO FINISH
19 RIGHT NOW.
20 THEN I WILL ASK THE DEFENSE WHETHER THAT'S SO
21 STIPULATED.
22 (ATTORNEYS CONFER)
23 MR. BROWN: SO, YOUR HONOR, IF YOU ARE READY --
24 I'M NOT SURE WHERE WE ARE.
25 SHOULD I JUST ANNOUNCE WHAT IT IS?
26 THE COURT: YES. WHY DON'T YOU DO THIS. WHY
27 DON'T YOU, ASSUMING YOU'VE WORKED IT OUT -- JURORS, PLEASE.

28 -- WHY DON'T YOU STATE WHAT THE STIPULATION IS OR WHAT
3063
1 YOU'RE UNDERSTANDING OF IT IS.
2 AND THEN I WILL ASK BOTH SIDES WHETHER THEY
3 STIPULATE -- THAT IS, ALL PARTIES, WHETHER THEY STIPULATE TO
4 WHATEVER THAT YOU STATED WAS THE STIPULATION.
5 MR. BROWN: IF THERE'S NO OBJECTION, I'D JUST
6 LIKE TO WRITE THE NUMBER UP THERE SO THEY CAN SEE IT.
7 MR. HARDY: THAT'S ALL RIGHT.
8 MR. BROWN: THE STIPULATION IS THAT A QUALIFIED
9 EXPERT OPINION OF THE PRESENT VALUE OF MR. WHITELEY'S LOSS
10 OF HOUSEHOLD SERVICES IS THE SUM \$763,546.
11 THE COURT: LET ME ASK YOU: DO YOU ALL SO
12 STIPULATE?
13 YOU OBVIOUSLY DO, MR. BROWN?
14 MR. BROWN: I DO.
15 THE COURT: LET'S HEAR FROM THE OTHERS.
16 IS THAT A STIPULATION?
17 MR. HARDY: YES, YOUR HONOR.
18 MR. FURR: YES, YOUR HONOR.
19 MR. ROSSE: YES, YOUR HONOR.
20 THE COURT: OKAY.
21 (ATTORNEYS CONFER)
22 THE COURT: WHAT IS THE NEXT ORDER OF BUSINESS?
23 MR. BROWN: A VIDEO DEPOSITION.
24 THE COURT: OKAY.
25 MS. CHABER: YES, YOUR HONOR. AT THIS TIME, THE
26 PLAINTIFFS WOULD PROPOSE SHOWING A VIDEO THAT CORRESPONDS TO
27 PRIOR TESTIMONY OF JOSEPH BUMGARNER.
28 THE COURT: CAN YOU SPELL THAT NAME.
3064
1 MS. CHABER: SOMETIMES. I THINK IT'S B-U-M --
2 THE COURT: I WANT TO GET IT RIGHT, WHATEVER IT
3 IS.
4 MR. ESCHER: HERE IT IS. B-U-M-G-A-R-N-E-R.
5 THE COURT: B-U-M-G-A-R-N-E-R?
6 MR. ESCHER: THAT'S RIGHT, YOUR HONOR.
7 THE COURT: THE FULL NAME JOSEPH --
8 MR. ESCHER: JOSEPH E. BUMGARNER.
9 THE COURT: THIS IS A VIDEOTAPE DEPOSITION THAT
10 YOU WANT TO PLAY FOR THE JURY?
11 MS. CHABER: YES.
12 THE COURT: LET'S HANDLE THE MARKING OF THIS.
13 MS. CHABER: YES.
14 EXCUSE ME ONE SECOND.
15 I WILL HAVE MARKED, YOUR HONOR, THE TRANSCRIPT OF
16 WHAT WILL BE SHOWN. IT'S DATED NOVEMBER 11TH, 1996.
17 THE CLERK: PLAINTIFFS' EXHIBIT 1921.
18 (DOCUMENT MORE PARTICULARLY
19 LISTED IN THE INDEX MARKED
20 FOR IDENTIFICATION PLAINTIFFS'
21 EXHIBIT # 1921)
22 MS. CHABER: AND I WOULD PROPOSE THAT THE COURT
23 REPORTER DOES NOT NEED TO REPORT THIS, YOUR HONOR.
24 AND THERE'S A COPY FOR THE COURT.
25 THE COURT: DO YOU WANT TO, THOUGH, MARK THE
26 VIDEOTAPE ITSELF AT SOME POINT? WE NEED TO DO THAT FOR
27 IDENTIFICATION ONLY.
28 MS. CHABER: SINCE IT'S SET UP AND READY TO
3065
1 GO --
2 THE COURT: THAT'S FINE. BUT WE NEED TO JUST
3 REMEMBER TO DO IT AT SOME POINT.

4 MS. CHABER: YES.
5 THE COURT: WE CAN DO IT AFTER YOU PLAY IT,
6 WHATEVER YOU WANT.
7 IS THIS THE AGREEMENT? LET ME JUST BE SURE WE
8 ALL HAVE IT RIGHT.
9 WHAT IS BEING PLAYED ON THIS VIDEO IS WHAT IS
10 BEING INDICATED ON 1921; IN OTHER WORDS, IT'S THE MATERIAL
11 ON 1921 THAT ISN'T CROSSED OUT?
12 MS. CHABER: CORRECT.
13 THE COURT: AND THAT THE COURT REPORTER NEED NOT
14 TAKE DOWN THE PLAYING OF THE VIDEO, BUT 1921 FOR
15 IDENTIFICATION WILL STAND IN ITS PLACE AS TO WHAT WAS PLAYED
16 ON THE VIDEO?
17 MR. ESCHER: YOUR HONOR, JUST ONE
18 CLARIFICATION.
19 THERE IS A SMALL PORTION OF THE VIDEOTAPE WHICH
20 IS MISSING. AND WE ARE GOING TO HAVE TO READ INTO THE
21 RECORD A PORTION OF THE TRANSCRIPT, WHICH IS 1921.
22 AND WE'LL GET TO THAT AT THAT POINT, BUT IT'S NOT
23 ON THE VIDEOTAPE.
24 THE COURT: OKAY.
25 ARE WE GOING TO STOP THE VIDEO WHEN WE GET TO
26 THAT POINT AND READ IT?
27 MR. ESCHER: YES, YOUR HONOR.
28 THE COURT: SO LET ME MODIFY WHAT I SAID AND SEE
3066
1 IF I HAVE IT RIGHT NOW.
2 WHAT WILL BE SHOWN TO THE JURY ON THE VIDEO OR
3 READ TO THE JURY ARE THOSE PORTIONS THAT ARE NOT CROSSED OFF
4 ON 1921 FOR IDENTIFICATION?
5 AND THE COURT REPORTER NEED NOT TAKE DOWN EITHER
6 THE PLAYING OF VIDEO OR THE READING FROM THE TRANSCRIPT?
7 MR. ESCHER: THAT IS CORRECT, YOUR HONOR.
8 MS. CHABER: YES.
9 THE COURT: SO THAT'S WHAT WE'LL DO.
10 ARE WE READY TO GO OFF THE RECORD FOR THE PLAYING
11 OF THE VIDEO NOW?
12 MS. CHABER: I HOPE SO.
13 (DISCUSSION OFF THE RECORD)
14 THE COURT: BACK ON THE RECORD.
15 IF ANYBODY WANTS TO GO BACK ON THE RECORD, YOU
16 NEED TO STATE "BACK ON THE RECORD" BEFORE YOU SPEAK, SO THAT
17 JUDITH KNOWS THAT IT'S TIME FOR HER TO GET BACK TO WORK.
18 WE ARE OFF THE RECORD.
19 (VIDEOTAPE SHOWN)
20 THE COURT: WE ARE BACK ON THE RECORD.
21 AND THE RECORD SHOULD REFLECT THAT WE HAVE PLAYED
22 THE VIDEOTAPE UP TO PAGE 139, LINE 13, WHERE WE WILL PICK UP
23 FIRST THING TOMORROW MORNING.
24 COULD SOMEBODY BE GOOD ENOUGH TO TURN THE LIGHTS
25 ON, PLEASE.
26 JURORS, OVER THE EVENING, PLEASE CONTINUE TO
27 FOLLOW THE ADMONITION.
28 AND WE ARE GOING TO START TOMORROW AT 9:00
3067
1 O'CLOCK. I'D LIKE TO GET IN A GOOD LONG DAY TOMORROW,
2 BECAUSE, AS YOU KNOW, WE ARE NOT GOING TO BE HERE ON FRIDAY
3 AND I DON'T HAVE ANYTHING ELSE ON THE CALENDAR TOMORROW. SO
4 I'D LIKE TO PLAN TO GO TOMORROW FROM 9:00 TO 5:00.
5 HAVE A GOOD EVENING, AND LET'S PLEASE BE HERE BY
6 9:00 SHARP TOMORROW.
7 (THE PROCEEDINGS ADJOURNED AT 4:30 P.M.)
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Testimony: Smith Mondt Leonard Bumgarner Volume 21 February 9, 2000 Working Transcript
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